



# CITY OF LODI

## COUNCIL COMMUNICATION

**AGENDA TITLE:** Adopt resolution approving a mitigation monitoring program and authorizing the City Manager to enter into a land lease agreement with CalPeak Power, LLC as related to the installation of a power generation plant located at the Fred M. Reid Industrial Substation site, 1215 E. Thurman Street (EUD)

**MEETING DATE:** February 5, 2003

**PREPARED BY:** Electric Utility Director

**RECOMMENDED ACTION:** That the City Council adopt a resolution approving a Mitigation Monitoring Program and authorizing the City Manager to enter into a land lease agreement with CalPeak Power, LLC for the installation of a power generation plant located at the Fred M. Reid Industrial Substation, (industrial substation) site located at 1215 E. Thurman Street, Lodi.

**BACKGROUND INFORMATION:** CalPeak Power is proposing to construct and operate a 49 megawatt (MW) electric generating power plant. This facility will be constructed on property owned by the City of Lodi and would be electrically interconnected to Lodi's industrial substation. The property, approximately two (2) acres in size, is located adjacent to Well 4R and industrial substation. The term of this ground lease agreement is nine (9) years, with a yearly rent of twenty-four thousand dollars (\$24,000).

This project will significantly increase Lodi's electric system reliability by reducing outages and disturbances created by transmission problems and transformer outages at Lockeford Substation. This will further insure Lodi's customers with uninterrupted electric service.

Included in this Council action is the required Mitigation Monitoring and Reporting Program. This program was developed as a result of the City Council's certification of the Mitigated Negative Declaration for the project in December, 2002. The primary goal of the program is to ensure that during design, construction and operation of the project the mitigation measures that were adopted are implemented. Each measure is listed by the applicable phase and responsible party. The City's Community Development Department will continue to take the lead in this program.

**FUNDING:** None.

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Electric Utility Director

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ANV/MG/ke

C: City Attorney  
Finance Director  
Community Development Director

**APPROVED:**

  
Janet Kott

Janet Kott - City Manager

FINAL REPORT

**MITIGATION MONITORING  
AND REPORTING  
PROGRAM**

*Prepared by:*

**URS**

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December 2002

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The City of Lodi is the lead agency responsible for authorizing construction of the Lodi Electric Energy Facility (LEEF). The Initial Study (IS)/Mitigated Negative Declaration (MND) prepared for the project provides analysis of the environmental effects resulting from the construction and operation of the LEEF project (State Clearinghouse No. 2002102044, November 2002).

After considering the environmental analysis provided in the MND, the City of Lodi has issued a project site approval to construct the LEEF. CalPeak Power – Midway, LLC (CalPeak Power) proposes to construct and operate a nominal net 49 megawatt (MW) “simple-cycle” power plant referred to as LEEF. The plant will be constructed on property owned by the City of Lodi located at 1215 East Thurman Street, east of State Highway 99. The parcel (Assessor’s Parcel Number 049-070-75) is approximately 8.1 acres and the plant will occupy a two-acre portion of the parcel. The property is located in an industrially zoned portion of the City of Lodi, east of State Highway 99. A project location map and site plan are provided in Figures 1 and 2, respectively.

The project includes a number of measures to reduce or avoid potential environmental impacts associated with project construction and maintenance. Section 21081.6 of the Public Resources Code requires the lead or responsible agency, which approves or carries out a project where an MND has identified measures to mitigate significant environmental effects, to adopt a “reporting monitoring program for adopted or required changes to mitigate or avoid significant environmental effects.” In accordance with Section 21081.6 of the Public Resources Code, this Mitigation Monitoring and Reporting Program (MMRP) has been prepared.

## **1.1 PURPOSE OF THE MITIGATION MONITORING AND REPORTING PROGRAM**

The MMRP developed for the LEEF project has been prepared in compliance with the requirements established in the California Environmental Quality Act (CEQA). CEQA provides that when adopting an MND, a public agency must adopt an MMRP for the changes to the project which it has adopted or made condition of approval in order to mitigate or avoid significant project-related impacts on the environment. The MMRP is designed to ensure compliance during implementation of the approved project through ongoing monitoring and reporting of adopted mitigation measures. The primary goal of the MMRP is to ensure that during final design, construction, and operation, the project will avoid or reduce potentially significant environmental impacts.

The achievement of this goal involves the following five key actions:

- Adoption of mitigation measures as identified in this MMRP and in the MND as conditions of approval of the project
- Implementation of the adopted mitigation measures, as appropriate during design, construction, and/or operation of the project
- Implementation of a monitoring process that confirms the application of the adopted mitigation measures
- Implementation of a monitoring process that measures the applied effectiveness of the adopted mitigation measures
- Establishment of a review and decision process that modifies the adopted mitigation measures or institutes new mitigation measures, as necessary, to achieve the avoidance or reduction of significant impacts recognized in the MND

The MMRP for the LEEF project will be in place through all phases of the project, including design, construction, and operation. The City of Lodi is responsible for the overall implementation and management of the MMRP through the design, construction, and operations periods. The City of Lodi includes staff familiar with the project and qualified to determine if an adopted mitigation measure is being properly implemented. The Community Development Director and/or assignee will be responsible for ensuring the following are implemented:

- A MMRP Reporting Form is prepared for each impact and its corresponding mitigation (see example in Appendix A).
- Appropriate specialists are retained as needed to perform or monitor specific mitigation activities.
- MMRP Reporting Forms are distributed to the appropriate parties so that specific action items can be developed to carry out the necessary mitigation. These will be listed in the implementation action items section of the form.
- Mitigation measures that continue into the operational phase will be incorporated into LEEF's operational procedures.
- The Community Development Director and/or assignee will approve, by signature and date, the completion of each action item that was identified on the MMRP Reporting Form.

All MMRP Reporting Forms for impacts requiring no further monitoring will be signed off as completed by the Community Development Director and/or assignee at the bottom of the MMRP Reporting Form.

Unanticipated circumstances may arise requiring the refinement of mitigation measures. The Community Development Director and/or assignee is responsible for approving any such refinements or additions. A revised MMRP Reporting Form will be prepared by the Community Development Director and/or assignee for each such addition or refinement and provided to the appropriate design, construction, or operational personnel for compliance.

The Community Development Director and/or assignee has the authority to stop the work of construction contractors, if compliance with any aspects of the MMRP is not occurring after appropriate notifications have been issued.

All active and completed MMRP Reporting Forms will be kept on file with the City of Lodi. Forms will be available for inspection upon request at the following address:

Mr. Konradt Bartlam  
Community Development Director  
City of Lodi  
221 West Pine Street  
Lodi, CA 95241-1910

## **2.1 MITIGATION MONITORING AND REPORTING PROGRAM PHASES**

The MMRP described herein is intended to provide focused yet flexible guidelines for monitoring the implementation of the mitigation measures discussed in the MND and approved by the City of Lodi. All mitigation measures that are the responsibility of the lead agency, are included and listed in Table 1. Other agencies involved in the implementation of a specific mitigation measure are shown in the “Associated Agency” column in Table 1. Section 3.0 of this document lists all mitigation measures adopted for the project. Each mitigation measure is individually numbered and grouped by area of potential impact. Table 1 correlates each mitigation measure by its assigned number to the specific phase of the project to which the measure applies. The three project phases, which include design, construction, and operation, are discussed in more detail below. A Reporting Form (see example in Appendix A) will be prepared for each impact and its corresponding mitigation measure as identified in Section 3.0 of this document.

### **2.1.1 Design Phase**

The design phase includes preparation of engineering design, architectural design, and construction drawings by project design engineers and architects. Prior to initiation of design phase activities, the measure(s) applicable to each design phase activity are identified and reviewed with the design engineer, architect, or other responsible parties. In the event the Community Development Director and/or assignee determines that there is non-compliance with any of the mitigation measures to be implemented during the design phase, corrective actions are required and a follow-up review is conducted after the design documents are modified in response to the Community Development Director and/or assignee comments. Reporting Forms are completed after each activity.

**TABLE 1  
APPLICABLE PROJECT PHASES FOR  
IMPLEMENTATION OF PROJECT MITIGATION**

Mitigation Measure	Applicable Phase			Agency	
	Design	Construction	Operation	Lead	Associated
<b>General</b>					
GEN-1	✓	✓		City of Lodi	County of San Joaquin
<b>Agriculture</b>					
AG-1				County of San Joaquin	
<b>Air Quality</b>					
AQ-1		✓		SJAPCD	City of Lodi
<b>Biological Resources</b>					
BIO-1	✓	✓	✓	CDFG/USFWS/NMFS	
BIO-2	✓	✓		CDFG/USFWS/NMFS	
BIO-3	✓			CDFG/USFWS/NMFS	
BIO-4		✓		City of Lodi	County of San Joaquin
BIO-5		✓		CDFG/USFWS/NMFS	
<b>Cultural Resources</b>					
CUL-1		✓		SHPO	N/A
<b>Geotechnical</b>					
GT-1	✓	✓		City of Lodi	County of San Joaquin
GT-2	✓	✓		City of Lodi	County of San Joaquin
<b>Hazards</b>					
HAZ-1	✓	✓	✓	City of Lodi	County of San Joaquin
HAZ-2	✓	✓	✓	City of Lodi	County of San Joaquin
<b>Noise</b>					
NOI-1	✓	✓		City of Lodi	N/A
<b>Public Utilities</b>					
PU-1	✓	✓		City of Lodi	N/A
<b>Traffic</b>					
TRA-1	✓	✓		City of Lodi	County of San Joaquin
TRA-2	✓	✓		City of Lodi	County of San Joaquin
<b>Visual Resources</b>					
VIS-1	✓	✓		City of Lodi	N/A
VIS-2	✓	✓	✓	City of Lodi	N/A
VIS-3	✓		✓	City of Lodi	N/A

SJAPCD: San Joaquin Air Pollution Control District

CDFG: California Department of Fish and Game

USFWS: U.S. Fish and Wildlife Service

NMFS: National Marine Fisheries Service

N/A: Not Applicable

### 2.1.2 Construction Phase

A pre-construction meeting will be held with the contractor prior to the initiation of construction activity. The Community Development Director and/or assignee will attend the meeting to explain the MMRP contractor and City of Lodi roles and responsibilities; and the approach for consultation site visits and inspections. Construction activities are monitored as conditions dictate to ensure that required mitigation measures are implemented. Applicable measures are discussed with construction contractors periodically as needed to facilitate implementation. The Community Development Director and/or assignee coordinates with affected local, state, and federal agencies to ensure applicable ordinance, standards, and guidelines for construction are implemented.

### 2.1.3 Operational Phase

Once the facility is complete and operating, the operational aspects of the MMRP will, at this point, become part of LEEF's operational procedures.

The mitigation measures described in the MND that were adopted as conditions of project approval are listed below. Mitigation is listed by type of topical issue.

### **3.1 GENERAL**

**GEN-1** Prior to site development, CalPeak Power will submit project construction and grading plans to the city of Lodi Public Works Department for review and comment. The plan submittal will follow a typical building permit and grading permit submittal process. CalPeak Power will incorporate the plan check comments into the project.

### **3.2 AGRICULTURE**

**AG-1** The San Joaquin Multi-Space County Plan (SJMSCP) designates these two parcels Multi-Purpose Open Space Lands and this category does not require compensation in the form of preserve acquisition. The Multi-Purpose Open Space Lands have a limited value to the SJMSCP covered species and their conversion necessitates a requirement to assist in financing the SJMSCP Preserve System by supporting a portion of the enhancement, management, and administrative costs associated with the preserve system. The LEEF project will submit the \$895 per acre fee or the rate in effect at the time of permit issuance consistent with the provisions of the adopted SJMSCP.

### **3.3 AIR QUALITY**

**AQ-1** CalPeak Power will comply with the SJAPCD rules and regulations to reduce fugitive dust emissions, including implementing the following:

- All unpaved construction areas will be sprinkled with water or other acceptable SJAPCD dust-control agents during dust-generating activities to reduce dust emissions. Additional watering or acceptable SJAPCD dust-control agents will be applied during dry weather or windy days.

### **3.4 BIOLOGICAL RESOURCES**

**BIO-1** The Mokelumne River crossing will be designed and constructed in such a way as to avoid impacts to the waterway and adjacent riparian areas, with the use of directional drilling techniques. The boring entry and exit areas will be placed no closer than 250 feet from the top of the bank with all staging and construction areas located in previously disturbed, paved, or ruderal areas. A frac-out contingency plan will be implemented to minimize potential impacts from the release of drilling muds into the water column.

- BIO-2** All impacts to native trees, shrubs, and habitats will be avoided by design. A biological monitor will be onsite during construction to ensure that native trees, shrubs, or habitats are not impacted.
- BIO-3** Any active or potential raptor nests will be monitored by biological monitors with no construction activities occurring within one-quarter mile (1,320 feet) of the nests until any young have fledged. If a raptor or other special-status bird is found nesting in a tree, construction activities may be delayed, or other protective measures pursued, dependent upon the direction of the qualified biologist.
- BIO-4** Upon completion of construction, all areas subject to temporary ground disturbances, including the laydown area, pipeline corridors, and pulling areas, will be restored to pre-construction conditions.
- BIO-5** All mitigation measures specified as conditions of any permits necessary for the project (i.e., U.S. Army Corps of Engineers Section 404 permit, etc.) will be implemented.

### 3.5 CULTURAL RESOURCES

- CUL-1** If buried cultural materials are encountered during construction, all work in that area must halt until a qualified archaeologist can evaluate the nature and significance of the finds and recommend further mitigation measures if needed. If human remains are encountered during construction, all work in that area must halt immediately and the San Joaquin County Coroner must be contacted, pursuant to California Public Resources Code sections 5097.94, 5097.98 and 5097.99. Once the County Coroner has made a determination as to the remains, the Applicant will coordinate with the State Historic Preservation Office (SHPO) and other parties, as appropriate, to develop a plan to evaluate the resource and make a determination regarding additional mitigation measures that may be required.

### 3.6 GEOTECHNICAL

- GT-1** Grading and construction standards based on the site-specific conditions identified in the Applicant's Geotechnical Report will be incorporated into design and construction of the proposed facilities, including the following:
- Project design will meet or exceed existing earthquake design standards.
  - Grading and site preparation will adhere to the requirements provided in the geotechnical engineering study to be prepared for the pipeline and the plant site.

**GT-2** The project will implement construction BMPs, and will employ the protective erosion control measures consistent with those described in the State General Permit for Discharges Associated with Construction Activities and the project Stormwater Pollution Prevention Plan (SWPPP).

### **3.7 HAZARDS**

**HAZ-1** The plant and gas pipeline will be designed, constructed, and operated in conformance with all applicable laws, ordinances, regulations, and standards, including all applicable industry safety standards, City of Lodi and County of San Joaquin ordinances/standards. The U.S. Department of Transportation's Office of Pipeline Safety standards will be adhered to during the construction and operation of the gas pipeline and associated facilities.

**HAZ-2** Safety precautions have been designed and will be installed in order to mitigate risks associated with a potential accident, including secondary containment around hazardous materials associated with the facility, preparation and implementation of a SPCC Plan, a hazardous materials Business Plan, and a RMP pursuant to the CalARP Program. LNG facilities, if used, will be outfitted with appropriate fire prevention and response features in accordance with NFPA 59A, and be included in the CalARP Program Risk Management Program.

### **3.8 NOISE**

**NOI-1** All construction activities will comply with the County of San Joaquin and the City of Lodi's allowable construction limits of 7 a.m. to 7 p.m. Monday through Saturday, and prohibits construction on Sundays and holidays.

### **3.9 PUBLIC UTILITIES**

**PU-1** CalPeak Power will coordinate the proposed project design, specifically proposed trenching activities, with responsible utilities to ensure that the project does not conflict with existing utilities and maintenance of those utilities, particularly related to City Water Well #4.

### **3.10 TRAFFIC**

**TRA-1** A traffic control plan will be prepared by KD Anderson in accordance with the County of San Joaquin and City of Lodi traffic control guidelines, and will address construction traffic along the pipeline route. Trenching of the natural gas pipeline

along the north side of Clarksdale Road will require signage, flagmen, and lane restrictions. The traffic control plan will also include provisions for coordinating with local emergency service providers regarding construction times and lane closures.

**TRA-2** CalPeak Power will obtain an encroachment permit from the County of San Joaquin for proposed trenching activities affecting County roads, and through the city of Lodi for trenching activities. This process will include submittal of project plans, review of plans by the County, possible revisions of the plans relative to concerns brought forth by the County of San Joaquin, and finally, issuance of the respective permit.

### 3.11 VISUAL RESOURCES

- VIS-1** The project design includes perimeter fencing along Thurman Street at the plant site. The facility will be color-treated with consistent, non-reflective paint tones. It has been designed in accordance with the City of Lodi Design Review Guidelines and approved by the City of Lodi.
- VIS-2** The site will be landscaped at initial development of the facility and will be done in accordance with the landscape concept plan designed in accordance with the City of Lodi. The metering station will be landscaped in accordance with San Joaquin County requirements.
- VIS-3** During normal operation, night lighting will consist of shoebox fixtures. Outside floodlights will be installed approximately every foot, pursuant to City of Lodi requirements. The lamp housing will be adjusted to shine out and down. Other facility lighting will be used during emergencies only. Operations lighting will be shielded to minimize offsite glare.

URS Corporation. 2002. Preliminary Frac-Out Contingency Plan.

**SAMPLE REPORTING FORM**

LODI ELECTRIC ENERGY FACILITY  
MITIGATION MONITORING AND REPORTING PROGRAM

REPORTING FORM

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MMRP FILE:

---

Location:  Onsite

Offsite (Give Address)

\_\_\_\_\_  
\_\_\_\_\_

Project Phase:  Design

Construction

Operation

---

Impact Issue(s):

Land Use     Biological Resources     Air Quality     Hazardous Waste

Aesthetics     Public Utilities     Noise     Cultural Resources

Hydrology     Transportation     Geotechnical

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Description of Activity:

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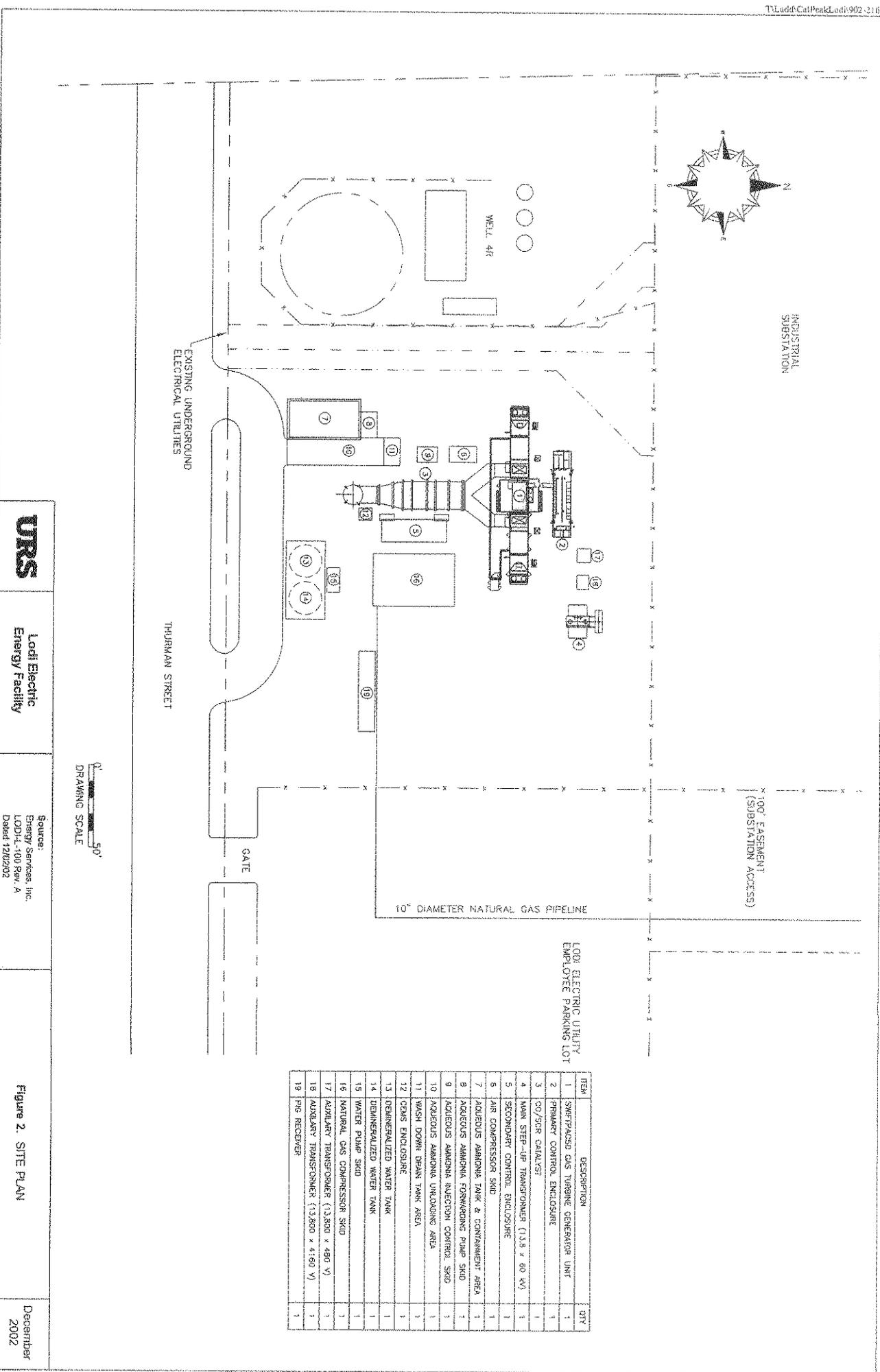
Applicable Mitigation Measures:

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Methods of Implementation:







**Lodi Electric Utility  
Employee Parking Lot**

ITEM#	DESCRIPTION	QTY
1	SMARTPACSD GAS TURBINE GENERATOR UNIT	1
2	PRIMARY CONTROL ENCLOSURE	1
3	CO/50% GALVANIZ	1
4	MAIN STEP-UP TRANSFORMER (13.8 x 60 KV)	1
5	SECONDARY CONTROL ENCLOSURE	1
6	AIR COMPRESSOR SKID	1
7	AQUEOUS AMMONIA TANK & CONTAINMENT AREA	1
8	AQUEOUS AMMONIA FORWARDING PUMP SKID	1
9	AQUEOUS AMMONIA INJECTION CONTROL SKID	1
10	AQUEOUS AMMONIA UNLOADING AREA	1
11	WASH DOWN BAY TANK AREA	1
12	OENS ENCLOSURE	1
13	DEMINERALIZED WATER TANK	1
14	DEMINERALIZED WATER TANK	1
15	WATER PUMP SKID	1
16	NATURAL GAS COMPRESSOR SKID	1
17	AUXILIARY TRANSFORMER (13.8KV x 480 V)	1
18	AUXILIARY TRANSFORMER (13.8KV x 4160 V)	1
19	PHS RECEIVER	1

**URS**

Lodi Electric  
Energy Facility

Source:  
Energy Services, Inc.  
LODI-1-100 Rev. A  
Dated 12/02/02

Figure 2. SITE PLAN

December  
2002

**GROUND LEASE**

**BY**

**AND**

**BETWEEN**

**CITY OF LODI, as Landlord**

**AND**

**CALPEAK POWER-MIDWAY LLC, as Tenant**

**Dated February \_\_\_\_\_, 2003**

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## GROUND LEASE

This GROUND LEASE (the "Lease") is made and entered into as of February \_\_, 2003, (the "Effective Date"), by and between the CITY OF LODI, a California municipality ("Landlord"), and CALPEAK POWER-MIDWAY, LLC, a Delaware limited liability company or its designated affiliate ("Tenant"), with respect to the following:

### RECITALS

A. The City of Lodi and the California Department of Water Resources desire to improve the reliability of the City of Lodi's electrical power system.

B. In furtherance thereof, Landlord desires to lease the Premises (as defined below) to Tenant and Tenant desires to lease the Premises from Landlord.

C. The parties desire to enter into this Lease to set forth their rights and obligations relating to the Premises.

NOW, THEREFORE, in consideration of the rents and covenants hereafter set forth, and for other good and valuable consideration, Landlord hereby leases the Premises to Tenant and Tenant hereby takes and hires the Premises from Landlord, upon the following terms and conditions:

### ARTICLE I PREMISES

Section 1.01 Premises Defined. Subject to the provisions of Section 1.02 below, the "Premises" consist of the following:

(a) That certain real property located within the City of Lodi (the "City"), County of San Joaquin, State of California, consisting of approximately 2 acres and more particularly described on Exhibit "A" and depicted on Exhibit "B" attached hereto and incorporated herein by this reference (the "Land");

(b) All right, title and interest of Landlord, if any, in and to the land lying in the bed of any street or highway in front of or adjoining such Land;

(c) All present or future rights, privileges, easements or appurtenances to such Land, including air and development;

(d) Any strips or gores adjoining the Land, and all licenses, easements, rights of way, claims, rights or benefits, covenants, conditions and servitudes and all other appurtenances used or connected with the beneficial use or enjoyment of the Land;

(e) An easement on, over, under and across the parcel owned by Landlord to the north and east of the Land as depicted on Exhibit "C" (the "Easement Parcel") attached hereto for the

construction, installation, maintenance, repair and replacement of an underground gas pipeline; and

(f) A license to enter and use a parcel owned by Landlord as more particularly described on Exhibit "D" attached hereto (the "Storage Parcel") for storing materials and equipment to be used for Tenant's construction of Tenant Improvements (as defined below).

Section 1.02 Useable Premises and Adjacent Premises Defined, Certain Limitations with Respect to Adjacent Premises.

(a) Useable Premises and Adjacent Premises Defined. As used herein, the Useable Premises shall mean that portion of the Premises consisting of approximately two (2) acres bordered on the south by the public road known as Thurman Road and located as depicted on Exhibit "B" attached hereto. The balance of the approximately eight (8) acre parcel, not including the Useable Premises, shall be referred to herein as the "Adjacent Premises," which shall consist of the following all of which are depicted on Exhibit "B", the "Easement Parcel," the "Storage Parcel," and the "Remainder Parcel." As used herein, the "Remainder Parcel" shall consist of that portion of the Adjacent Premises that does not consist of the Easement Parcel or the Storage Parcel. The Adjacent Premises is also approximately depicted as the cross hatched areas on Exhibit "B" attached hereto. Each of the Easement Parcel, the Storage Parcel and the Remainder Parcel are also indicated on Exhibit "B".

(b) Subdivision Map Act Compliance. Landlord represents and warrants that it is not required to create a parcel map in order to lease the Premises to Tenant.

(c) Limitations with Respect to Adjacent Premises. Subject to Tenant's right, title and interest in and to the Easement Parcel as set forth in Section 1.04, and Tenant's license to use the Storage Parcel as set forth in Section 1.05 and inspection and other rights with respect to the Adjacent Premises pursuant to the terms of this Lease, Landlord shall at all times retain a nonexclusive license to control and use the Adjacent Premises.

Section 1.03 Easements Over Easement Parcel. A plot plan for Landlord's grant of easements to Tenant over the Easement Parcel is attached as Exhibit "C". For the entire term of the Lease, Landlord hereby grants to Tenant a non-exclusive easement in, on, over, under and across the Easement Parcel for the purpose of the construction, installation, maintenance, repair, replacement and removal from time to time of gas, electric, water, sewer, drainage and other utility improvements necessary or desirable for Tenant's use of the Useable Premises, including without limitation, an underground gas pipeline (collectively, the "Easements"). Notwithstanding the foregoing, except as otherwise permitted pursuant to Section 1.05, Tenant shall not have the right to place any substantial above ground facilities on the Adjacent Premises. Immediately upon Landlord's grant of an additional Easement to Tenant and promptly upon the request of Tenant or any of Tenant's leasehold mortgagees, Landlord shall execute, deliver, acknowledge and record in the public records all such documents and instruments as Tenant or any of its leasehold mortgagees shall reasonably request to confirm or effect such grants.

Section 1.04 Grant of License. Landlord hereby gives to Tenant permission and an irrevocable nonexclusive license to enter the Storage Parcel for the purpose of storing materials and

equipment to be used for Tenant's construction of Tenant Improvements (as defined below). The license created herein shall remain effective until the earlier of (a) six (6) months following the completion of the Tenant Improvements, (b) the removal of all materials and equipment from the Storage Parcel, or (c) the termination of the Lease.

## ARTICLE II TERM AND TERMINATION

Section 2.01 Term Defined. The initial term of this Lease (the "Term") shall commence as of the Effective Date (the "Commencement Date") and shall continue until nine (9) years after the "Commercial Operation Date" as such term is defined in that certain Amended and Restated Power Purchase Agreement dated as of May 2, 2002 ("PPA") between Tenant and Department of Water Resources, an agency of the State of California, which is anticipated to be June 1, 2003 plus any extensions to the Commercial Operation Date as contemplated by the PPA. Notwithstanding the foregoing, Tenant shall have the right to terminate the Lease and end the Term upon any termination of the PPA by providing not less than fourteen (14) days written notice to the Landlord.

Section 2.02 Renewal Terms. Tenant shall have the absolute and unconditional right and option (each such right and option, a "Renewal Option") to extend the Term of this Lease an additional ten years upon the same terms and conditions as this Lease, upon receipt by the Landlord from the Tenant prior to the expiration of the Term of written confirmation that the Tenant has executed an extension to the PPA, or executed a new power purchase agreement with any other power purchaser(s) or that the Tenant intends to continue to operate the power generation facility as a merchant facility and sell power directly or through a power marketer into the California electricity spot market.

Section 2.03 Termination.

(a) Landlord shall have the right to terminate this Lease upon written notification to Tenant upon any of the following conditions: (1) Failure for Tenant or its successor in interest to have a power plant, as defined in Section 6.01, in Commercial Operation by February 1, 2004; or (2) Tenant has failed to complete the construction of the "Tenant Improvements" (as defined below) one (1) year after Commercial Operation Date, subject to extension pursuant to Section 15.08; or (3) Tenant fails to operate continuously a power plant on the Premises for a period of thirty-six (36) consecutive months.

(b) If this Lease is terminated by either party under any provision hereof, and/or upon the expiration of the Term of this Lease (collectively, the "Termination Date"), the following shall pertain: (1) subject to Landlord's right to acquire Tenant's improvements on or to the Premises ("Tenant Improvements") pursuant to Section 10.03, the Tenant Improvements shall remain Tenant's property, and Tenant shall have one hundred eighty (180) days to remove such Tenant Improvements along with all of Tenant's fixtures, equipment and other personal property from the Premises and to vacate and surrender possession of the Premises to Landlord in a clean, neat and orderly condition, in as near to the condition of the Premises as of the Commencement Date (excluding any landscaping or vegetation that exists on the Premises as of the Commencement Date, any changes due to events beyond the control of Tenant including but not limited to

damage by earthquakes, flood, other natural hazards or natural growth of vegetation); (2) Tenant shall execute such documents as may be reasonably requested by Landlord evidencing the surrender and reconveyance of the Premises; and (3) the parties shall apportion all taxes, utility and other expenses of the Premises. Any of Tenant Improvements, fixtures, equipment and other personal property not removed from the Premises within such one hundred eighty (180) day period after the Termination Date shall be deemed abandoned. During such one hundred eighty (180) day period: (i) Tenant may enter the Premises to remove such Tenant Improvements, fixtures, equipment and other personal property, without being deemed a holdover; (ii) Landlord shall have no obligation to take affirmative action to preserve or protect such Tenant Improvements, fixtures, equipment and other personal property; and (iii) in entering the Premises, Tenant shall comply with Landlord's reasonable instructions.

### ARTICLE III RENT

#### Section 3.01 Base Rent; Special Additional Rent.

(a) Accrual of Base Rent. Base rent shall commence accruing as of the Commercial Operation Date. Prior to that time period, Base Rent shall not accrue. For each twelve month period following the Commercial Operation Date, annual "Base Rent" shall accrue, but not be paid, in the sum of Twenty Four Thousand and 00/100 Dollars (\$24,000.00). Interest shall accrue on the annual Base Rent at a rate of 5.5% per annum. Rent shall be prorated for any period of time that is less than one year.

(b) Payment of Base Rent. Except as otherwise set forth in Section 10.03, accrued Base Rent plus interest thereon shall be payable in full upon termination of the Lease.

### ARTICLE IV TAXES AND UTILITY EXPENSES

Section 4.01 Taxes. Tenant agrees to pay all real estate taxes, possessory interest taxes, personal property taxes and special assessments assessed against the Tenant Improvements during the Term of this Lease. Landlord shall pay all other taxes and special assessments levied against the Premises, if any. For any fraction of a tax period included in the Term (either at the beginning or end thereof), Tenant shall be responsible for that portion of the total taxes levied or assessed or becoming payable which is allocable to such included period, determined by multiplying the total taxes by a fraction whose denominator is the number of days in the tax period and whose numerator is the number of days in such period included in the Term. In the event that any special assessments are payable in installments, Tenant shall have the right to pay the same over the longest available installment period and Tenant shall not be obligated to pay any such installments due and payable outside the Term. Finally, as a material part of the consideration for Tenant's entering into this Lease, Landlord agrees that Tenant shall not be responsible and/or obligated for any increase in taxes applicable to the Land which result, in whole or in part, from improvements made by the Landlord or from the actions of Landlord, its agents or any other parties whose relevant actions are based, in whole or in part, upon a contractual relationship with Landlord (including but not limited to any change in ownership of all or any part of Premises), in any reassessment or increase in such taxes.

Section 4.02 Utility Expenses. During the Term of this Lease, Tenant shall pay any water or sewer charges imposed with respect to the Useable Premises or any improvements thereon and Tenant shall pay all charges for sewer, water, electricity, gas or other services furnished to the Useable Premises or the occupants thereof during the Term of this Lease.

Section 4.03 Refunds. Any refunds or rebates of amounts paid by Tenant pursuant to Sections 4.01 or 4.02 shall belong to Tenant, and Landlord shall aid Tenant in obtaining any such refund or rebate, provided that the cost of obtaining the same shall be paid by Tenant.

Section 4.04 Exceptions. Nothing in this Lease shall be construed to require Tenant to pay any inheritance, estate, transfer, successions, gift, income, franchise or profit taxes that are or may be imposed upon Landlord, its successors or assigns.

Section 4.05 Right to Contest. Tenant may, in its own name or in Landlord's name, take any action deferring payment of any amount due under this Article IV, or contest any tax or other charge for which Tenant is responsible hereunder. Landlord will execute any documents relating to any such action provided that Tenant shall protect, defend, indemnify and hold Landlord harmless from any liability therefore and that all expenses of any such action shall be borne by Tenant.

## ARTICLE V CONDUCT OF BUSINESS BY TENANT

Section 5.01 Permitted Use. The Premises may be used for the generation of electricity, steam or waste heat products and for any uses related or incidental thereto and for any other lawful use. Nothing in this Lease shall impose on Tenant any obligation to actually operate upon the Premises or otherwise conduct business of any nature thereon. Tenant may discontinue operation upon the Premises at any time or from time to time.

Section 5.02 Exclusive Control. Tenant shall have exclusive control, possession, occupancy, and management of the Premises, subject only to the restrictions self-imposed by Tenant.

Section 5.03 Compliance with Laws.

(a) During the Term, subject to the provisions of this Lease, Tenant covenants that Tenant will comply, or require its Subtenants (as defined below) to comply, at no cost or expense to Landlord, with all laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments and appropriate departments, commissions, boards and offices thereof, which may be applicable to Premises arising out of Tenant's or such Subtenant's use of the Premises or any improvements thereon.

(b) Tenant may, in its own name or in Landlord's name, contest or permit its Subtenants to contest by appropriate legal proceedings, without cost or expense to Landlord, the validity of any law, ordinance, order, rule, regulation or requirement of the nature referred to in subsection (a) above and to postpone compliance with the same, provided such contest shall be promptly and diligently prosecuted at no expense to Landlord and so long as Landlord shall not thereby

suffer any civil liabilities or be subject to any criminal penalties or sanctions, and Tenant shall properly protect, defend and save harmless Landlord against any liability and claims for any such liability.

Section 5.04 Hazardous Materials.

(a) Tenant shall not introduce, release or discharge in, on or about the Premises any Hazardous Materials (as hereinafter defined); provided, however, that the foregoing covenant shall not limit or restrict Tenant's use, storage or generation of Hazardous Materials so long as such Hazardous Materials are those typically used in connection with electrical generating facilities. Any use, storage or generation of Hazardous Materials by Tenant in or about the Premises shall be carried out in compliance with all applicable Environmental Laws (as hereinafter defined).

(b) If at any time during the Term, Tenant shall introduce, release or discharge in, on or about the Premises any Hazardous Material, Tenant shall, at its sole cost and expense, carryout and complete any repair, closure, detoxification, decontamination or other clean up of the Premises from any Hazardous Material introduced, released or discharged by Tenant in, on or about the Premises. If Tenant fails to implement and diligently pursue any such repair, closure, detoxification, decontamination or other clean up of the Premises, following ninety (90) days from Tenant's receipt of notice from Landlord that Tenant has failed to perform or diligently pursue its obligations under this subsection (b), Landlord shall have the right, but not the obligation, to terminate this Lease and carry out such action and to recover the cost and expenses so incurred by Landlord from Tenant.

(c) Except as provided in subsection (b) above, Landlord shall be solely responsible, both as to performance and payment of costs therefor, to carryout and complete any repair, closure, detoxification, decontamination or other clean up of the Premises as a result of any introduction, release or discharge by Landlord or any other party (other than Tenant) of Hazardous Materials in, on or about the Premises.

(d) As used herein, the term "Hazardous Materials" means, collectively, (i) those substances included within the definitions of or identified as "hazardous chemicals," "hazardous waste," "hazardous substances," "hazardous materials," "toxic substances," "extremely hazardous substances," "toxic pollutants," "contaminants," "pollutants" or similar terms in or pursuant to, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 et seq.) ("CERCLA"), as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99 499, 100 State, 1613), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.) ("RCRA"), the Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.) ("OSHA"), and the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq. ("HMTA"), and in the regulations promulgated pursuant to such laws, all as amended, (ii) those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR part 302 and amendments thereto), (iii) any material, waste or substance which is or contains (A) petroleum, including crude oil or any fraction thereof, natural gas, or synthetic gas usable for fuel or any mixture thereof, (B) asbestos, (C) polychlorinated biphenyls, (D) designated as a "hazardous

substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. § 1251 et seq. (33 U.S.C. § 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317), (E) flammable explosives, (F) radioactive materials, and (iv) such other substances, materials and wastes which are or become regulated or classified as hazardous, toxic or as "special wastes" under any Environmental Laws. As used herein, "Environmental Laws" shall mean all applicable requirements of environmental, public or employee health and safety, public or community right to know, ecological or natural resource laws or regulations or controls, including all applicable requirements imposed by any law (including without limitation common law), rule, order, or regulations of any federal, state, or local executive, legislative, judicial, regulatory, or administrative agency, board, or authority, which relate to (i) pollution or protection of the air, surface water, groundwater, or soil, (ii) solid, gaseous, or liquid waste generation, treatment, storage, disposal or transportation, (iii) exposure to Hazardous Materials, or (iv) regulation of the manufacture, processing, distribution and commerce, use, or storage of Hazardous Materials.

ARTICLE VI  
IMPROVEMENTS AND ALTERATIONS AND REPAIRS AND  
MAINTENANCE OF PREMISES

Section 6.01 Improvements.

(a) General. Tenant shall at its own cost construct as part of the Tenant Improvements a 49 mw power plant on the Useable Premises. Such construction shall be in accordance with all applicable laws and regulations. Tenant may also make any changes, additions or alterations to the Premises as it shall determine and Tenant may raze, remove or destroy any improvements or vegetation presently located on the Premises.

(b) Fence and Landscaping. Prior to the Commencement Date, Tenant shall propose to Landlord a plan for installation of a fence or other landscaping improvement which surrounds the exterior of the perimeter of the Premises (excluding any driveway, right of way or easement reasonably required for Tenant's access to and use of the Premises) and is designed to provide an aesthetic buffer between the Premises and Thurman Road and the Premises and the Adjacent Premises (either improvement, the "Visual Fence"). Landlord shall have the right to review and approve Tenant's proposal, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant shall install the Visual Fence within one (1) year after the Commencement Date.

Section 6.02 Alterations by Tenant. Tenant shall have the right at any time and from time to time during the Term to make, at its sole cost and expense, such changes and alterations, structural or otherwise, in or to the improvements constructed upon the Premises as Tenant shall deem necessary or desirable, including, without limitation, the right to remove and/or demolish buildings and other improvements whether or not new buildings or other improvements are to be constructed in their place.

Section 6.03 Title to Improvements and Personal Property. Notwithstanding anything to the contrary in this Lease, all Tenant Improvements, and other fixtures, equipment and other personal property at any time constructed or located in, on or at the Premises or otherwise affixed to the Premises shall at all times during the Term be exclusively owned by, and shall belong to,

Tenant. All the benefits and burdens of ownership of the foregoing, including title, depreciation, tax credits, and all other items, shall be and remain in Tenant during the Term.

Section 6.04 Repairs and Maintenance. Any and all buildings, structures or improvements which may be constructed on the Premises pursuant to this Lease shall, during the Term of this Lease, be kept and maintained in good condition and repair by Tenant, at no cost or expense to Landlord, reasonable wear and tear and damage by casualty or condemnation excepted. In connection with the Visual Fence and landscaping provided for in Section 6.01 above, such improvements shall be maintained at Tenant's sole cost and expense, in a neat and attractive condition consistent with the surrounding properties.

## ARTICLE VII INSURANCE AND SELF INSURE AND INDEMNITY

Section 7.01 Insurance. Tenant hereby covenants and agrees at all times during the Term of this Lease, to either self insure (subject to Section 7.02, below) or maintain commercial general liability insurance naming Tenant and Landlord, as an additional insured, as their interests may appear. Such commercial general liability policies, shall cover bodily injury and property damage to third parties and shall be maintained with limits of no less than \$2,000,000 per occurrence and in the aggregate, excess liability in the amount of \$5,000,000 per occurrence. During the Term, so long as an endorsement for "sudden and accidental" or comparable endorsement is available, such commercial general liability policies shall include such endorsement. Copies of certificates of such policies shall be delivered to Landlord within thirty (30) days after Tenant's receipt of Landlord's written request for such information; provided, that Tenant shall not be required to respond to such requests more often than once a year.

Section 7.02 Self Insure. Notwithstanding anything to the contrary in Section 7.01 above, upon the written consent of Landlord, which consent shall not be unreasonably withheld, delayed or conditioned, Tenant may self insure any or all of the coverages required to be maintained by Tenant pursuant to this Lease. In the event that Landlord consents, Tenant shall furnish to Landlord a certificate of self-insurance identifying the coverages so self insured.

Section 7.03 Waiver of Subrogation. Landlord and Tenant each hereby waives any and all rights of recovery against the other, and against the officers, employees, agents, representatives, customers and business visitors of such other party, for loss of or damage to such waiving party or its property or the property of others under its control, arising from any cause insured against under any policy of insurance carried by such waiving party at the time of such loss or damage, to the extent of insurance proceeds actually received. Landlord and Tenant shall, upon obtaining the policies of insurance which they maintain in connection with this Lease, give notice to their respective insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.

Section 7.04 Indemnities.

(a) To the fullest extent permitted by law, Tenant shall indemnify, protect, defend and hold Landlord harmless from and against any liability or expense (including but not limited to reasonable attorneys' fees and costs of defense) for any damage or injury to persons or property

in or about the Premises or any improvements thereon which may result from the use or occupation of the Premises or any improvements thereon by or the breach of the provisions of this Lease by Tenant. Provided, however, that the foregoing shall not extend to any damage or injury to the extent caused by the negligence or willful misconduct of Landlord, its agents, employees, contractors or invitees or for which Landlord is obligated to indemnify Tenant pursuant to subsection (b) below.

(b) To the fullest extent permitted by law, Landlord shall indemnify, protect, defend and hold Tenant harmless from and against any liability or expense (including but not limited to reasonable attorneys' fees and costs of defense) for any damage or injury to persons or property in or about the Premises or the improvements thereon which may result from (i) the negligence or willful misconduct of Landlord or its employees, agents or contractors or the breach of the provisions of this Lease (including any of Landlord's representations, warranties or covenants) by Landlord or (ii) the use or occupation or exercise of any rights by Landlord or any other party claiming by, through or under Landlord with respect to the Adjacent Premises. Provided, however, that the foregoing shall not extend to any damage or injury to the extent caused by the negligence or willful misconduct of Tenant, its agents, employees, contractors or invitees or for which Tenant is obligated to indemnify Landlord pursuant to subsection (a) above.

## ARTICLE VIII ASSIGNMENT AND SUBLETTING

Section 8.01 Tenant's Right to Assign or Transfer. Tenant may assign or otherwise transfer all or any part(s) of this Lease or leasehold estate hereunder without Landlord's consent. Any assignee of Tenant shall assume all obligations and liabilities of Tenant under this Lease. Tenant shall promptly notify Landlord of any such assignment or transfer. No such assignment shall release Tenant from any obligation or liability under this Lease, unless Landlord consents in writing to such release. If Tenant assigns this Lease, then as between Landlord and Tenant, Tenant shall be deemed to have assigned to the assignee or transferee all claims against Landlord then existing, together with all liabilities and obligations of Tenant then existing or thereafter arising under this Lease (except as otherwise expressly provided in this Lease).

Section 8.02 Tenant's Right to Sublet. As used herein, a "Sublease" means any sublease of the Premises or any part of the Premises, or any other agreement or arrangement (including a license agreement or concession agreement) made by Tenant granting any third party the right to occupy, use or possess any portion of the Premises, together with any subleases or any further level of subletting of the Premises or any part of the Premises, as any of the foregoing may be assigned, extended, renewed, or amended from time to time. Tenant may enter into or modify any Sublease, terminate any Sublease or evict any subtenant or occupant under a Sublease (a "Subtenant"), and grant any consent or waiver under Sublease, all without Landlord's consent. If Tenant enters into any Sublease, then such Sublease shall be subordinate to this Lease. No Sublease shall affect or reduce any obligations of Tenant or rights of Landlord under this Lease. All obligations of Tenant under this Lease shall continue in full force and effect notwithstanding any Sublease. Tenant shall upon request (no more frequently than once every twelve months) provide Landlord with a current list, and copies, of all Subleases. Tenant hereby assigns, transfers and sets over to Landlord all of Tenant's right, title, and interest in and to every Sublease entered into by Tenant from time to time, together with all subrents or other sums of

money due and payable under such Sublease, and all security deposited with Tenant under such Sublease. Such assignment shall, however, become effective and operative only if this Lease shall expire or be terminated or cancelled, or if Landlord re enters or takes possession of the Premises pursuant to this Lease.

Section 8.03 Subtenant Nondisturbance. Landlord shall, upon Tenant's request made at any time or from time to time, enter into a subordination, nondisturbance and attornment agreement ("SNDA") with any Subtenant, provided that: (a) such Subtenant's Sublease is commercially reasonable; (b) Tenant provides Landlord with a copy of such Sublease; (c) such Subtenant's Sublease does not grant any rights to the Subtenant that the Tenant would not have following the expiration or termination of this Lease (i.e., the term of the Sublease does not extend beyond the Term of this Lease) ; and (d) Tenant is not in default under this Lease (i.e., after any applicable notice and cure period). If Landlord fails to execute and return to Tenant any such SNDA within ten (10) business days after Landlord's receipt of the same, then Landlord shall indemnify Tenant for such failure by Landlord pursuant to Section 7.04(b) above.

#### ARTICLE IX HYPOTHECATION AND DISPOSITION OF LEASEHOLD ESTATE IN THE PREMISES

Section 9.01 Hypothecation. Tenant may, from time to time, without obtaining the consent of Landlord, hypothecate, mortgage, pledge or alienate Tenant's leasehold estate and rights hereunder as security for payment of any indebtedness and/or the performance of any obligation. The holder of any such lien upon the leasehold estate of Tenant under this Lease, or any replacement thereof, is herein referred to as "mortgagee." A mortgagee may enforce such lien and acquire title to the leasehold estate in any lawful way and, pending foreclosure of such lien, the mortgagee may take possession of and operate upon the Premises performing all obligations performable by Tenant, and upon foreclosure of such lien by power of sale, judicial foreclosure, or upon acquisition of the leasehold estate by deed in lieu of foreclosure, the mortgagee may, without further consent of Landlord, sell and assign the leasehold estate hereby created. Any person or entity acquiring such leasehold estate so sold and assigned by the mortgagee shall be liable to perform the obligations imposed on Tenant by this Lease only during the period such person has ownership of said leasehold estate or possession of the Premises subject thereto. The term "mortgagee" shall be deemed to include without limitation the holder of any purchase money mortgage or deed of trust, including any so called "all inclusive deed of trust" delivered in connection with an assignment of Tenant's leasehold estate or in connection with a sale and leaseback as permitted in Section 9.05 below, and any such mortgagee shall be entitled to the benefits of all of the provisions of this Lease in favor of a mortgagee. The rights and privileges hereunder of any mortgagee shall be subject to the rights and privileges of any other mortgagee whose lien has priority over the lien of such mortgagee.

Section 9.02 Notice to and Rights of Mortgagee.

(a) When giving notice to Tenant with respect to any default hereunder, Landlord shall also serve a copy of each such notice upon each mortgagee who shall have given Landlord a written notice specifying its name and address. In the event Tenant shall default in the performance of any of the terms, covenants, agreements and conditions of this Lease on Tenant's

part to be performed, any mortgagee shall have the right, within the grace period available to Tenant for curing such default, to cure or make good such default or to cause the same to be cured or made good whether the same consists of the failure to pay rent or the failure to perform any other matter or thing, and Landlord shall accept such performances on the part of any such mortgagee as though the same had been done or performed by Tenant. In the case of a default by Tenant in the payment of money, Landlord will take no action to effect a termination of this Lease by reason thereof unless such default has continued beyond sixty (60) days after Landlord shall have served a copy of such notice upon such mortgagee, it being the intent hereof and the understanding of the parties that any such mortgagee entitled to such notice shall be allowed up to but not in excess of sixty (60) days after the service of such notice to cure any default of Tenant in the payment of rent or in the making of any other monetary payment required under the terms of this Lease. In the case of any other default by Tenant, Landlord will take no action to effect a termination of the Term of this Lease by reason thereof unless such default has continued beyond the grace period available to Tenant for curing said default, and then only after Landlord shall have given to each such mortgagee a reasonable time after the expiration of Tenant's grace period for curing such default within which either (i) to cure such default, if such default is susceptible of being cured by mortgagee without the mortgagee obtaining possession of the Premises, or (ii) to obtain possession of the Premises (including possession by a receiver) and to cure such default, in the case of a default which is susceptible of being cured by the mortgagee only when the mortgagee has obtained possession thereof, or (iii) to institute foreclosure proceedings and to complete such foreclosure proceedings or otherwise acquire Tenant's interest under this Lease with reasonable and continuous diligence in the case of a default which is not susceptible of being cured by any such mortgagee; provided, however, that any such mortgagee shall not be required to continue such possession or continue such foreclosure proceedings if the default which prompted the service of such a notice has been cured.

(b) The time available to any mortgagee entitled to notice to initiate foreclosure proceedings as aforesaid shall be deemed extended by the number of days of delay occasioned by other circumstances beyond the mortgagee's control. During the period that such mortgagee shall be in possession of the Premises and/or during the pendency of any foreclosure proceedings instituted by any mortgagee, the mortgagee shall pay or cause to be paid the rent specified in Article III above and all other charges of whatsoever nature payable by Tenant hereunder which have been accrued and are unpaid and which will thereafter accrue during said period. Following the acquisition of Tenant's leasehold estate by the mortgagee, or its designee, either as a result of judicial foreclosure or trustee sale proceedings or acceptance of an assignment in lieu of foreclosure, the mortgagee or party acquiring title to Tenant's leasehold estate shall, as promptly as possible, and in any event within thirty (30) days, commence the cure of all defaults hereunder to be cured and thereafter diligently process such cure to completion, except such defaults and covenants which cannot, in the exercise of reasonable diligence, be cured or performed by the mortgagee or party acquiring title to Tenant's leasehold estate, whereupon Landlord's right to effect a termination of this Lease based upon the default in question shall be deemed waived.

Any default not susceptible of being cured by the mortgagee or party acquiring title to Tenant's leasehold estate shall be, and shall be deemed to have been, waived by Landlord as to such party acquiring Tenant's interest in this Lease upon completion of the foregoing proceedings or acquisition of Tenant's interest in this Lease by any purchaser (who may, but need not be, any mortgagee) at the foreclosure or trustee's sale, or who otherwise acquires such Tenant's interest

by virtue of the mortgagee's exercise of its remedies. Any such purchaser, including, without limitation, any mortgagee, shall be liable to perform the obligations imposed on Tenant by this Lease incurred or accrued only during the period such person has ownership of said leasehold estate or possession of the Premises. Nothing herein shall preclude Landlord from exercising any of Landlord's rights or remedies with respect to any other default by Tenant during any period of any such forbearance subject to the rights of the mortgagee as herein provided. All notices by Landlord to any mortgagee shall be given in the manner proscribed by Section 15.05 below for notices, addressed to the mortgagee at the address last specified in writing to Landlord by the mortgagee.

Section 9.03 New Lease. In the event that this Lease is terminated for any reason, including, without limitation, any termination or rejection through bankruptcy or chapter proceedings, any mortgagee holding a lien that is a first and senior lien upon the leasehold estate of Tenant shall have the right, within sixty (60) days of receipt of notice of such termination, to demand a new lease to replace this Lease covering the Premises for a term to commence on the date of procurement by Landlord of possession of the Premises and to expire on the same date as this Lease would have expired if it had otherwise continued uninterrupted until its scheduled date of termination, and containing all of the same rights, terms, unexpired options, covenants, considerations and obligations as set forth in this Lease. Such new lease shall be executed and delivered by Landlord to such mortgagee within sixty (60) days after receipt by Landlord of written notice from the mortgagee of such election and upon payment by such mortgagee of all sums owing by Tenant under the provisions of this Lease (less the rent and other income actually collected by Landlord in the meantime from any Subtenants) and upon performance by the mortgagee of all other obligations of Tenant under the provisions of this Lease with respect to which performance is then due and which are susceptible of being cured by the mortgagee. After such termination and cancellation of this Lease and prior to the expiration of the period within which any such mortgagee may elect to obtain such new lease from Landlord, Landlord shall refrain from terminating any existing Sublease and from executing any new Subleases or otherwise encumbering the real property demised hereby without the prior written consent of any such mortgagee and Landlord shall account to such mortgagee for all rent collected from Subtenants during such period. Any new lease granted any such mortgagee shall enjoy the same priority in time and in right as this Lease over any lien, encumbrance or other interest created by Landlord before or after the date of such new lease and shall have the benefit of and vest in such mortgagee all right, title, interest, power and privileges of Tenant hereunder in and to the Premises, including specifically, without written limitation, the assignment of Tenant's interest in and to all then existing Subleases and Sublease rentals and the automatic vesting of title to all buildings, improvements and appurtenances, as well as to all equipment, fixtures and machinery therein until the expiration or termination of the Term thereof. Such new lease shall provide, with respect to each and every Sublease which immediately prior to the termination of the Term of this Lease was superior to the lien of the mortgagee executing the new lease as tenant, or as to which such mortgagee has executed a nondisturbance agreement, that such tenant thereunder shall be deemed to have recognized the Subtenant under the Sublease, pursuant to the terms of the Sublease, as modified by any applicable nondisturbance or attornment agreement, as though the Sublease had never terminated but had continued in full force and effect after the termination of the term of this Lease, and to have assumed all of the obligations of the sublessor under the Sublease accruing from and after the termination of the term of this Lease, except that the obligation of the new tenant, as sublessor, under any covenant of quiet enjoyment, express or

implied, contained in any such Sublease, shall be limited to the acts of such tenant and those claiming by, under and through such tenant.

Section 9.04 Consent of Mortgagee. Without the prior consent of any mortgagee and except as otherwise permitted herein, neither this Lease nor the leasehold estate created by this Lease shall be surrendered, cancelled, or amended (except with respect to termination pursuant to any eminent domain proceedings concerning a total taking or a casualty as provided in Article XI below) and no agreement purporting to surrender, cancel, terminate, or amend this Lease without the consent of any mortgagee entitled to receive notice of default under this Article IX shall be valid or effective. In order to facilitate any financing or refinancing by Tenant which involves the hypothecation of Tenant's leasehold estate and rights hereunder, Landlord, if requested so to do by Tenant, agrees to join in executing any and all instruments which legal counsel for any lender which is or may become a mortgagee and the holder of a lien that is a first lien and charge upon the leasehold estate of Tenant may reasonably require in order: (i) to grant to the mortgagee or prospective mortgagee the right to act for Tenant in enforcing or exercising any of Tenant's rights, options or remedies under this Lease; (ii) to amend the provisions of this Lease which relate to the application of Tenant's portion of any insurance proceeds or condemnation award as may reasonably be requested by any mortgagee; and (iii) to otherwise amend or supplement this Lease, provided that in no event shall Landlord be required to incur any personal liability for the repayment of any obligations secured by any such hypothecation of the leasehold estate of Tenant nor to subordinate Landlord's rights and reversionary interests in and to the Premises to any such hypothecation nor shall any such amendment or supplement to this Lease adversely affect Landlord's rental, Tenant's payment of taxes, assessments, insurance and/or Tenant's payment of other obligations under this Lease, extend or otherwise modify the Term of this Lease or otherwise diminish or reduce Landlord's rights under this Lease (including, without limitation, Landlord's rights under this Article IX) except in a manner which is reasonable and which is not material to Landlord's interests. Landlord agrees to cause the holder of any deed of trust or mortgage encumbering Landlord's reversionary interests in and to the Premises, or any portion thereof, to subordinate the lien or charge of its deed of trust or mortgage to any such instrument, amendment and/or supplement executed by Landlord in order to comply with Landlord's obligations under this Section, if such subordination is requested by any lender of Tenant's which is or may become a mortgagee.

Section 9.05 Sale and Leaseback. Notwithstanding anything to the contrary herein contained, should Tenant assign its leasehold estate hereunder in connection with a sale and leaseback of the leasehold estate created by this Lease and simultaneously become vested with a subleasehold estate or similar possessory interest in the Premises by virtue of a sublease made by the assignee, or should Tenant convey its leasehold estate by way of a leasehold deed of trust or mortgage and retain its possessory interest in the Premises, then in neither of such events (i) shall the prior written consent of Landlord be required, nor (ii) shall the assignee of this Lease under any such sale and leaseback or the trustee, beneficiary or mortgagee under any such deed of trust or mortgage be deemed to have assumed or agreed to be bound by any of Tenant's obligations hereunder and such obligations shall continue to remain those of Tenant alone so long as Tenant shall retain its possessory interest, and performance by Tenant of any act required to be performed under this Lease by it or fulfillment of any condition of this Lease by Tenant shall be deemed the performance of such act or the fulfillment of such condition by such assignee, trustee, beneficiary or mortgagee, as the case may be, and shall be acceptable to Landlord with

the same force and effect as if performed or fulfilled by such assignee, trustee, beneficiary or mortgagee.

Section 9.06 No Merger. No merger of Tenant's leasehold estate into Landlord's fee title shall result or be deemed to result by reason of ownership of Landlord's or Tenant's estates by the same party or by reason of any other circumstances, without the prior consent of any and all mortgagees; provided that this provision shall not be deemed applicable to a termination of Tenant's leasehold estate by reason of Tenant's default or otherwise.

ARTICLE X  
TRANSFERS BY LANDLORD; RIGHT OF FIRST REFUSAL OF LANDLORD TO  
ACQUIRE TENANT IMPROVEMENTS;  
OPTION TO PURCHASE TENANT IMPROVEMENTS

Section 10.01 Transfer of Landlord's Interest. In the event of any sale of the Premises by Landlord, Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and unaccrued obligations contained in or derived from this Lease arising out of any act, occurrence or omission occurring after the consummation of such sale, provided that the purchaser at such sale or any subsequent sale of the Premises, covenants in writing to and with Tenant to carry out any and all of the covenants and obligations of Landlord under this Lease and provided further that no such assignment shall release the initial party executing this Lease, as Landlord, from Landlord's representations, warranties and covenants pursuant to Section 17.01 below.

Section 10.02 Right of First Refusal.

(a) If Tenant shall secure a firm written offer for the Tenant Improvements executed by any potential purchaser, said offer shall be submitted to Landlord, in writing, and the latter shall have twenty (20) days from the date of receipt of said notice in which to notify Tenant that it intends to exercise its right of first refusal to acquire the Tenant Improvements, in which event Landlord shall have the right to acquire the Tenant Improvements at the price and on the terms of said purchase as set forth in said offer plus the sum of (1) an additional five percent (5%) and (2) the reasonable and documented labor and expenses incurred by the party submitting the firm written offer, such labor and expenses not to exceed \$250,000. If Landlord shall not have notified Tenant in writing of its election to purchase either the Tenant Improvements within such twenty (20) day period, or in the further event Landlord shall fail to comply with the terms of said offer to purchase within the periods therein provided, then Tenant shall have the right to sell the Tenant Improvements upon the substantially the same terms and conditions as set forth in said notice. If Landlord, shall elect to purchase upon the terms contained in said notice, then Tenant shall consummate said purchase in accordance with the terms contained in said notice, provided that the purchase price shall be the price set forth in said notice plus an additional five percent (5%).

(b) Notwithstanding Section 10.02(a), if Tenant shall receive a written offer for the Tenant Improvements that is part of an offer for more than one power generation facility, the offer and sale for multiple power generation facilities shall not be subject to the right of first refusal set forth in Section 10.02(a). Upon any such sale, the right of first refusal shall terminate.

Section 10.03 Option to Purchase.

(a) Tenant hereby grants to Landlord an option to purchase the Tenant Improvements at the end of the Term as the same may be extended (the "Option"). The purchase price of the Tenant Improvements shall be the fair market value of the Tenant Improvements computed on a going concern basis as determined by Landlord and Tenant and based on the assumption of a ten year extension to the initial term of the Lease. If Landlord and Tenant cannot agree on a purchase price, the parties shall jointly appoint one independent MAI appraiser skilled in evaluating power plants to determine the fair market value of the Tenant Improvements. The valuation determined by such appraiser shall be deemed the fair market value of the Tenant Improvements. The cost of the jointly appointed appraiser shall be divided equally between the parties. If Landlord and Tenant cannot agree on one independent MAI appraiser, each party shall appoint an independent MAI appraiser skilled in evaluating power plants to determine the fair market value of the Tenant Improvements. Each appraiser so appointed shall determine the fair market value of the Tenant Improvements and if the difference between the two appraisals is less than ten percent of the higher appraisal, then the fair market value shall be the average of the two appraisals. If the difference between the two appraisals is greater than or equal to ten percent of the higher appraisal, the two appraisers shall select a third MAI appraiser skilled in evaluating power plants and the third appraisal shall be the determination of fair market value. Each party shall bear the cost of its own appraiser and the cost of the third appraiser shall be divided equally between the parties.

(b) Landlord may exercise such option by written notice to Tenant at any time prior to [90 days] before the termination of the Lease. Upon exercise of the option Tenant and Landlord shall in good faith negotiate a purchase and sale agreement. The purchase and sale agreement shall provide (1) the purchase shall be payable in cash with Landlord having a credit against the purchase price for the amount of Base Rent plus interest owed by Tenant, (2) an escrow closing, (3) that the Tenant Improvements shall be purchased "AS IS" without representations, warranties and covenants, and (4) the proration of annual Base Rent for the period ending on or before the closing date. If the parties fail to negotiate the purchase and sale agreement within ninety (90) days of determination of fair market value as set forth in Section 10.03(a), the parties shall request the American Arbitration Association to appoint an independent mediator to draft the purchase and sale agreement along standard industry terms. At the closing, Tenant shall deliver to the escrow agent an appropriate deed conveying to Landlord the entire interest of Tenant to the Tenant Improvements free and clear of all encumbrances.

(c) If Landlord declines to exercise the Option, Tenant shall have one hundred eighty (180) days from the end of the term of the Lease to remove the Tenant Improvements without any requirement to pay Base Rent or any other changes. During the one hundred eighty (180) day period in which Tenant is removing the Tenant Improvements, it shall not be deemed to be a holdover.

ARTICLE XI  
DAMAGE AND CONDEMNATION

Section 11.01 Damage or Destruction.

If during the Term of this Lease, the Premises or any improvements thereon (including the power generation equipment thereon) shall be damaged by fire, flood, tornado, by the elements, or otherwise, Tenant may, at Tenant's expense repair said damage and restore the Premises to their previous or like condition or raze such improvements.

Section 11.02 Condemnation.

(a) Definition of Terms.

(i) The term "total taking" as used in this Section means the taking of the entire Premises under the power of eminent domain or the taking of so much thereof as will in Tenant's judgment prevent or substantially impair the use of the Premises for the uses and purposes then being made or proposed to be made by Tenant, of the Premises.

(ii) The term "partial taking" means the taking of a portion only of the Premises which does not constitute a total taking as defined in clause (i) above.

(iii) The term "taking" shall include a voluntary conveyance by Landlord to an agency, authority or public utility under threat of a taking under the power of eminent domain in lieu of formal proceedings.

(iv) The term "date of taking" shall be the date upon which title to the property or portion thereof passes and vests in the condemnor or the date of entry of an order for immediate possession by a court of competent jurisdiction in connection with any judicial proceedings in eminent domain or the date physical possession of the property is taken or interfered with, whichever first occurs.

(v) The term "leased land" means the real property belonging to Landlord and demised hereby, but exclusive of any and all improvements situated upon the Premises at the commencement of the Term of this Lease and also exclusive of all improvements constructed or placed thereon by or under Tenant and exclusive of any grading and other site work performed by or under Tenant.

(b) Effect of Taking. If during the Term of this Lease, there shall be a total or partial taking under the power of eminent domain, then the leasehold estate of Tenant in and to the Premises, in the event of a total taking, or the portion thereof taken, in the event of a partial taking, shall cease and terminate, as of the date of taking thereof. If this Lease is so terminated in whole or in part, all rentals and other charges payable by Tenant to Landlord hereunder and attributable to the Premises, or portion thereof taken, shall be paid by Tenant up to and prorated through the date of taking by the condemnor, and the parties shall thereupon be released from all further liability in relation thereto.

(c) Allocation of Award. The proceeds of any total or partial taking award shall be divided between Landlord and Tenant in accordance with the applicable laws of the state California and as their respective interest may appear, which shall include, but not be limited to, an award to Tenant of an amount equal to the fair market value of all of Tenant Improvements, relocation, severance and moving costs, loss of business and goodwill, Tenant's leasehold value, and replacement costs related to such act(s) of condemnation.

(d) Reduction of Rent on Partial Taking. In the event of a partial taking, the Base Rent payable by Tenant pursuant to this Lease shall be proportionately adjusted from the date of taking to the date of expiration of the Term of this Lease by multiplying the Base Rent payable pursuant to the terms of the Lease (as if no taking had occurred) by a fraction, the numerator of which is the square footage of the Premises which was not taken and the denominator of which is the total square footage of the Premises.

(e) Rights of Mortgagees. In the event at the time of the taking the leasehold estate of Tenant is mortgaged as security to any mortgagee, any award or portion thereof to which Tenant is entitled shall be subject to the prior claim of such mortgagee.

## ARTICLE XII DEFAULTS AND REMEDIES

Section 12.01 Defaults by Tenant. If Tenant shall be in default with respect to any obligations, covenants or agreements to be performed by Tenant as set forth herein, and if such default is not cured by Tenant within twenty (20) days after Landlord has specifically notified Tenant in writing of such default (excepting therefrom the event when Tenant may be in default but has undertaken to cure the default and thereafter diligently pursues the cure to completion), Landlord may (exclusive of any rights of forfeiture) exercise any right or remedy provided by this Lease, law or equity, including, but not limited to, the right of specific performance; provided, that Landlord shall not have the right to seek or obtain Tenant's specific performance of obligations which Tenant has the right under this Lease to avoid, such as Tenant's right to terminate and not consummate this Lease as set forth in Section 16.03 below.

Section 12.02 Default by Landlord. Should Landlord fail to perform any obligation specified under this Lease, Tenant shall have the right, but shall not be obligated, to pay or discharge any such obligation. Should Tenant elect to pay or discharge any such obligation, Landlord shall, within ten (10) calendar days from the date of Tenant's written demand, reimburse Tenant in the full amount thereof together with Tenant's expenses incurred in connection therewith, including but not limited to, reasonable attorney's fees and interest at the Interest Rate, from the date of Tenant's disbursement. In the event Landlord fails to reimburse the monies and costs expended and accrued for and against Tenant, Tenant shall have the right to deduct from rent(s) thereafter due and payable under this Lease all amounts that have been so paid by, or accruing for, Tenant. Notwithstanding anything set forth within this Lease, in the event of Landlord's default including, without limitation, a default as specified above or a default with respect to any other obligation, covenant, agreement, representation or warranty Tenant shall be entitled to pursue any and all remedies available to it at law or equity, including, but not limited to, the right of specific performance.

Section 12.03 Nonrecourse to Landlord. Notwithstanding anything to the contrary in this Lease, the liability under this Lease of Landlord (including its successors or assigns), for damages or otherwise, shall be enforceable against, and shall not extend beyond its interest in the Premises. No property or assets whatsoever, other than Landlord's interest in the Premises, shall be subject to levy, execution or any other enforcement procedure for the satisfaction of any remedies (monetary or otherwise) of Tenant arising under or in connection with this Lease.

Section 12.04 Liability of Tenant. Landlord's sole recourse hereunder shall be against Tenant and Tenant's assets, except to the extent Tenant has Subleased or assigned its interest hereunder, in which case Landlord's recourse shall include any such successor and its assets. Except as provided in the sentence above, Landlord shall not have any recourse against any partners, members or affiliates of Tenant, nor shall Landlord make any claim against any such partners, members or affiliates of Tenant. This Section 12.04 is expressly for the benefit of the partners, members and affiliates of Tenant and shall survive the termination or expiration of this Lease.

Section 12.05 Expense of Litigation. If either party incurs any expense, including reasonable attorneys' fees, in connection with any action or proceeding instituted by either party by reason of any default or alleged default of the other party hereunder, the party prevailing in such action or proceeding shall be entitled to recover its said reasonable expenses from the other party. For purposes of this provision, in any unlawful detainer or other action or proceeding instituted by Landlord based upon any default or alleged default by Tenant hereunder, Landlord shall be deemed the prevailing party only if judgment is entered in favor of Landlord or if Tenant surrenders possession prior to the entry of any such judgment.

#### ARTICLE XIII HOLDING OVER

Section 13.01 Holding Over. Subject to Sections 2.06 and 10.03(c), if Tenant or anyone claiming under Tenant shall remain in possession of the Premises or any part thereof after expiration of the Term of this Lease or any earlier termination of this Lease without an agreement in writing between Landlord and Tenant with respect thereto, Tenant shall occupy upon all of the terms and conditions of this Lease except that the Base Rent due from Tenant shall be equal to one hundred ten percent (110%) of the Base Rent in effect at the end of the Term of this Lease, determined monthly. Landlord's acceptance of rent shall create only a month to month tenancy, in either case upon the terms set forth in this Section. Any such month to month tenancy shall be terminable at the end of any calendar month by either party by written notice to the other party given not less than thirty (30) days prior to the end of such month. Nothing contained in this Section shall be deemed or construed to waive Landlord's right of re entry or any other right of Landlord hereunder or at law.

#### ARTICLE XIV RECORDING, AND LIENS AND MORTGAGES

Section 14.01 Recording. Concurrently with their execution of this Lease, Landlord and Tenant shall execute and acknowledge a short form memorandum of lease and easement in the form attached hereto as Exhibit "E". The parties shall upon the occurrence of the Commencement Date or the termination of this Lease, pursuant to Section 16.03, execute an amendment to the short form memorandum setting forth the Commencement Date (and any change in the legal description of the Premises created by the Map Approval) or acknowledging that this Lease has terminated. Tenant shall have both the original short form memorandum and the amendment thereto recorded and, upon recordation, shall furnish to Landlord a copy of each bearing the stamp of the San Joaquin County Recorder. Under no circumstances shall either party have this Lease recorded in such office.

Section 14.02 Liens. Each of Landlord and Tenant covenant with the other that each party ordering labor or materials for use on or about the Premises or property adjacent thereto will indemnify, protect, defend and hold harmless the other against any loss or damage due to any lien filed against the Premises, if any, as the case may be, on account of non payment or dispute with respect to labor or materials furnished in connection with the work on or about the Premises or any adjacent property and such party shall cause no judgment to lie against the Premises or any such adjacent property. The party against whom such lien is filed shall notify the other within fifteen (15) days of its notice of filing and said lien shall be removed within twenty (20) days thereafter or protected by bond or surety should such party so affected desire to contest such lien.

## ARTICLE XV MISCELLANEOUS

Section 15.01 Landlord's Right of Access. Landlord and its agents shall have the right to enter the Premises upon reasonable notice to Tenant during regular business hours, and in accordance with Tenant's reasonable instructions, solely to (a) ascertain whether Tenant is complying with this Lease; (b) cure Tenant's defaults of which Landlord shall have given Tenant prior notice and opportunity to cure pursuant to Section 12.01 above; or (c) exhibit the Premises in contemplation of a transfer in compliance with this Lease. In entering the Premises pursuant to this Article, Landlord and its agents shall not unreasonably interfere with the conduct of the operations on the Premises and shall comply with Tenant's reasonable instructions. In addition, Landlord and Landlord's agents may enter the Premises without prior notice in an emergency situation to prevent damage to or destruction of property or risk to persons. Landlord shall indemnify, defend and hold harmless Tenant against any claims arising from Landlord's entry upon the Premises pursuant to this Section or any other provision of this Lease permitting Landlord to enter the Premises (except upon termination of this Lease).

Section 15.02 Severability. Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and such remaining provisions shall remain in full force and effect.

Section 15.03 Headings. The Article and Section captions contained in this Lease are for convenience only and shall not be considered in the construction and interpretation of any provision hereof.

Section 15.04 Incorporation of Prior Agreements, Amendments. This Lease and the exhibits hereto contain all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and all preliminary negotiations, agreements or understandings pertaining to any such matter shall not be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest.

Section 15.05 Notices. Any notice, consent or approval (collectively, "notice") required or permitted to be given hereunder shall be in writing and may be served personally or by mail; if served by mail it shall be addressed to Landlord or Tenant, as the case may be, at the address of such party shown below:

Landlord: City of Lodi  
City Manager  
221 West Pine Street  
Lodi, CA 95240

With a copy to: City of Lodi  
City Attorney  
221 West Pine Street  
Lodi, CA 95240

Tenant: CALPEAK POWER-MIDWAY, LLC  
7365 Mission Gorge Road  
San Diego, CA 92120  
Attn: Ron Watkins  
Facsimile: (619) 239 1307

With copies to: Arter & Hadden LLP  
725 South Figueroa Street, Suite 3400  
Los Angeles, CA 90017  
Attn: Bart Kessel, Esq.  
Facsimile: (213) 617-9255

Any notice which is personally served shall be effective upon service; any notice given by mail shall be deemed effectively given, if deposited in the United States mail, registered or certified with return receipt requested, postage prepaid and addressed as specified above, on the date of receipt, refusal or non delivery indicated on the return receipt. In addition, either party may send notices by facsimile ("FAX") or by any reputable courier service which provides written proof of delivery. Any notice sent by FAX shall be effective upon confirmation of receipt in legible form, and any notice sent by courier shall be effective upon the date of delivery as set forth in the courier's delivery receipt. Either party may, by notice to the other from time to time, specify a different address for notice purposes.

Section 15.06 Waivers and Consents. No waiver of any provision hereof shall be deemed a waiver of any other provision hereof. Consent to or approval of any act by one of the parties hereto shall not be deemed to render unnecessary the obtaining of such party's consent to or approval of any subsequent act. Except to the extent a provision expressly states otherwise, all consents required to be obtained under this Lease shall not be unreasonably withheld, conditioned or delayed.

Section 15.07 Use of Adjacent Premises. Without the prior written consent of Tenant, which consent may be withheld in its sole discretion, Landlord shall not lease the Adjacent Premises or cause or permit the Adjacent Premises to be used for any use directly or indirectly related to the permitted use set forth in Section 5.01.

Section 15.08 Force Majeure. In the event that either Landlord or Tenant is delayed in performing any obligation of Landlord or Tenant pursuant to this Lease by any cause beyond the reasonable control of the party required to perform such obligation, the time period for performing such obligation shall be extended by a period of time equal to the period of the delay. For the purpose of this Section, a cause shall be beyond the reasonable control of a party to this Lease when such cause would affect any person similarly situated (such as a power outage, labor strike or truckers' strike) but shall not be beyond the reasonable control of such party when peculiar to such party (such as financial inability).

Section 15.09 Quitclaim. At the expiration or earlier termination of this Lease, Tenant shall execute, acknowledge and deliver to Landlord, within fifteen (15) days after written demand from Landlord to Tenant, any quitclaim deed or other document, which may be reasonably requested by any reputable title company to remove this Lease as a matter affecting title to the Premises.

Section 15.10 Authority. Each individual executing this Lease on behalf of Landlord and

Tenant represents and warrants that the execution and delivery of this Lease on behalf of the party for whom such person is executing is duly authorized and that this Lease is binding upon such party in accordance with its terms.

Section 15.11 Estoppel Certificates.

(a) Tenant Estoppel Certificates. Tenant agrees at any time and from time to time upon not less than twenty (20) days' notice by Landlord to execute, acknowledge and deliver to Landlord a statement in writing certifying (i) that this Lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified and stating the modifications); (ii) whether or not to the best knowledge of Tenant there are then existing any offsets or defenses against the enforcement of any of the terms, covenants or conditions hereof upon the part of Tenant to be performed and, if so, specifying the same; (iii) the dates to which the rent and other charges have been paid, it being intended that any such statement delivered pursuant to this Section may be relied upon by any prospective purchaser of the fee of the real property comprising the Premises; and (iv) such other statements as may reasonably be requested by Landlord.

(b) Landlord Estoppel Certificates. Landlord agrees at any time and from time to time upon not less than twenty (20) days' prior notice by Tenant, to execute, acknowledge and deliver to Tenant a statement in writing certifying (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications); (ii) the dates to which the rent and other charges have been paid; (iii) stating whether or not to the best knowledge of Landlord, Tenant is in default in performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which Landlord may have knowledge; (iv) whether or not there are to Landlord's best knowledge any offsets or defenses claimed by and/or available to Tenant to the payment of rental, it being intended that any such statement delivered pursuant to this Section may be relied upon by any prospective assignee or Subtenant of the whole or any portion of the Premises, or by

any lender extending credit on the security of Tenant's leasehold estate; and (v) such other statements as may reasonably be requested by Tenant.

Section 15.12 Survival of Indemnities. The obligations of the indemnifying party under each and every indemnification and hold harmless provision contained in this Lease shall survive the expiration or earlier termination of this Lease to and until the last to occur of (a) the last date permitted by law for the bringing of any claim or action with respect to which indemnification may be claimed by the indemnified party against the indemnifying party under such provision or (b) the date on which any claim or action for which indemnification may be claimed under such provision is fully and finally resolved and, if applicable, any compromise thereof or judgment or award thereon is paid in full by the indemnifying party and the indemnified party is reimbursed by the indemnifying party for any amounts paid by the indemnified party in compromise thereof or upon a judgment or award thereon and in defense of such action or claim, including reasonable attorneys' fees incurred. Payment shall not be a condition precedent to recovery upon any indemnification provision contained herein.

Section 15.13 Surrender or Cancellation. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall terminate all or any existing Subleases, unless Landlord elects to treat such surrender or cancellation as an assignment to Landlord of any or all of such subleases.

Section 15.14 Brokers. Tenant and Landlord each represent and warrant to the other that they have had no dealings with any real estate brokers or agents in connection with the negotiation of this Lease and that no other broker, agent or other person retained by either of them is entitled to a fee or commission in connection with the execution of this Lease. Each party hereby expressly agrees and covenants to defend, indemnify and hold harmless the other from and against any and all claims, threatened or asserted, by any broker, finder or agent claiming under or through such indemnifying party in connection with the negotiation and execution of this Lease (including all rights addressed herein (such as options and easements)).

Section 15.15 Applicable Law. This Lease shall be governed by and construed in accordance with the laws of the State in which the Premises are situated, but without regard to any conflict of laws rules thereof.

Section 15.16 Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Lease and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or any exhibits or amendments hereto.

Section 15.17 Gender; Successors in Interest. The use of the masculine pronoun includes the feminine and neuter genders; the use of the singular form of a pronoun includes the plural and vice versa. The terms, conditions and covenants contained herein shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators, marital communities, if any, and assigns of the parties hereto.

Section 15.18 Covenants Running with the Land. All of the covenants, agreements, conditions and restrictions set forth in this Lease are intended to be and shall be construed as covenants

running with the land, binding upon, inuring to the benefit of and enforceable by the parties hereto and their successors and assigns.

Section 15.19 Quiet Enjoyment. Landlord covenants that, so long as Landlord has not terminated this Lease on account of default by Tenant, Tenant shall and may peaceably and quietly have, hold and enjoy the Premises for the Term without molestation or disturbance by or from Landlord or anyone claiming by or through Landlord or having title to the Premises paramount to Landlord, and free of any encumbrances created or suffered by Landlord, except the Permitted Exceptions and restrictions self imposed by Tenant.

Section 15.20 No Third Beneficiaries. The parties hereto agree that there are no third party beneficiaries to this Lease and that this Lease does not impart enforceable rights to anyone who is not a party.

Section 15.21 No Partnership. Notwithstanding any provision of this Lease, the parties hereto do not intend to create any joint venture, partnership, association taxable as a corporation, or other entity for the conduct of any business for profit. Neither party hereto shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other party.

Section 15.22 No Consequential Damages. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY HERETO BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR OTHER SPECIAL DAMAGES FOR NONPERFORMANCE OF ITS OBLIGATIONS UNDER THIS LEASE.

## ARTICLE XVI CONDITIONS TO EFFECTIVENESS

Section 16.01 Conditions to Effectiveness of Lease. Notwithstanding anything to the contrary in this Lease, the continued effectiveness of this Lease is expressly conditioned upon satisfaction or waiver by Tenant of the following conditions, in each case in the sole and absolute discretion of Tenant:

(a) The determination, in the sole judgment of Tenant, that the Premises and the Easements are suitable for Tenant's intended use.

(b) Issuance by the City and all other governmental authorities with jurisdiction of a building permit and all other discretionary permits and approvals required for Tenant to use, occupy, construct its contemplated improvements, in each case upon such terms and conditions acceptable to Tenant in its sole discretion, and to operate upon the Premises.

(c) The effectiveness of an Interconnection Agreement between Landlord and Tenant providing for the interconnection of Tenant's power generation facility with the Fred M. Reid Industrial Substation located on the Adjacent Premises.

Section 16.02 Approval, Disapproval or Waiver of Conditions. Tenant shall approve, disapprove or waive each of the conditions set forth in Section 16.01 above on or before the completion of

construction of the Tenant Improvements. In the event that Tenant has not disapproved any condition in writing to Landlord on or before the completion of construction of the Tenant Improvements, Tenant shall be deemed to have approved or waived of such condition. In the event that Tenant shall have disapproved any condition set forth in Section 16.01 above, then this Lease shall automatically terminate on the date of disapproval of such condition. Upon any termination of this Lease pursuant to this Section 16.03(a), each party shall bear its own costs and expenses incurred in the negotiation and preparation of this Lease and in performing its respective obligations hereunder through the date of such termination, and neither party shall have any further obligation to the other hereunder, except that nothing herein shall be deemed to relieve Landlord from liability or damages in the event of a failure of any condition as a result of a breach or default by Landlord of any representation, warranty or covenant contained in this Lease. Pending any such termination, each party shall perform its respective obligations pursuant to this Lease to be performed by it during the Initial Period.

ARTICLE XVII  
REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 17.01 By Landlord. Landlord hereby represents, warrants and covenants that the following are and will be true and correct as of the Effective Date and as of the Commencement Date:

(a) Landlord is a duly formed municipality under the laws of the State of California. Landlord has the legal power, right and authority to enter into this Lease and to consummate the transaction contemplated hereby. The person executing this Lease on behalf of Landlord has been duly authorized to do so;

(b) Landlord has previously delivered to Tenant all plans, maps, permits, reports, studies and tests (including, without limitation any and all environmental or soil studies or tests) either previously performed by Landlord or its agents or to which Landlord has or may obtain possession of,

(c) There are no actions, proceedings or investigations, including a taking, pending or threatened, against or affecting Landlord or the Premises;

(d) Current local zoning ordinances, general plans and other applicable land use regulations and all private covenants, conditions and restrictions, if any, affecting the Premises permit the lease of the Premises to Tenant without the consent or approval of any third party;

(e) No person or any legal entity other than Landlord has any right to occupancy or possession of the Premises;

(f) The Premises is in compliance in all material respects with all governmental requirements; and

(g) There are no underground tanks or Hazardous Materials located on the Premises, no such tanks have ever been located on the Premises and no such Hazardous Materials have ever been present, used, stored, treated, released from or disposed of or on the Premises; (ii) no enforcement, cleanup, removal or other governmental or regulatory actions have, at any time,

been instituted or, to the best of Landlord's knowledge, threatened with respect to the Premises; (iii) there is no current or, to the best of Landlord's knowledge, prior violation or state of noncompliance with any Environmental Law relating to Hazardous Materials with respect to the Premises; (iv) no claims have been made or, to the best of Landlord's knowledge, threatened by any third party with respect to the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or related to any Hazardous Materials; and (v) to the best of Landlord's knowledge, there are no current, and have been no, businesses engaged in the storage, treatment or disposal of Hazardous Materials on any property adjacent to the Property.

[Signature Page Follows]

IN WITNESS WHEREOF the parties hereto have executed this Lease as of the day and year first above written.

**"LANDLORD"**

**CITY OF LODI, A CALIFORNIA MUNICIPALITY**

By: \_\_\_\_\_

Print Name: H. DIXON FLYNN

Title: CITY MANAGER

**ATTEST:**

By: \_\_\_\_\_

Print Name: SUSAN BLACKSTON

Title: CITY CLERK

**APPROVED AS TO FORM:**

By: *Randall A. Hays*

Print Name: RANDALL A. HAYS

Title: CITY ATTORNEY

**"TENANT"**

**CALPEAK POWER-MIDWAY, LLC, A DELAWARE LIMITED LIABILITY COMPANY**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

A portion of that certain real property being in that parcel as shown on the map filed for Record in Book 31 of Surveys, at Page 75, San Joaquin County Records. Said Parcel being a portion of the Northeast Quarter of Section 7, T.3 N., R.7 E., Mount Diablo Baseline & Meridian, lying within the City of Lodi, County of San Joaquin, State of California being more particularly described as follows:

Beginning at the Northwest corner of the Northeast corner of Section 7;

Thence along the west line of said Northeast quarter of Section 7 South 00° 32' 00" East 759.55 feet to a point on the centerline of Thurman Street;

Thence along the centerline of Thurman Street South 87° 24' 39" East 142.33 feet;

Thence North 02° 35' 21" East 32.00 feet to a point on the north Right of Way of Thurman Street, said point being the True Point of Beginning;

Thence North 03° 09' 09" East 217.56 feet;

Thence North 28° 01' 46" West 58.25 feet;

Thence South 87° 04' 16" East 317.69 feet;

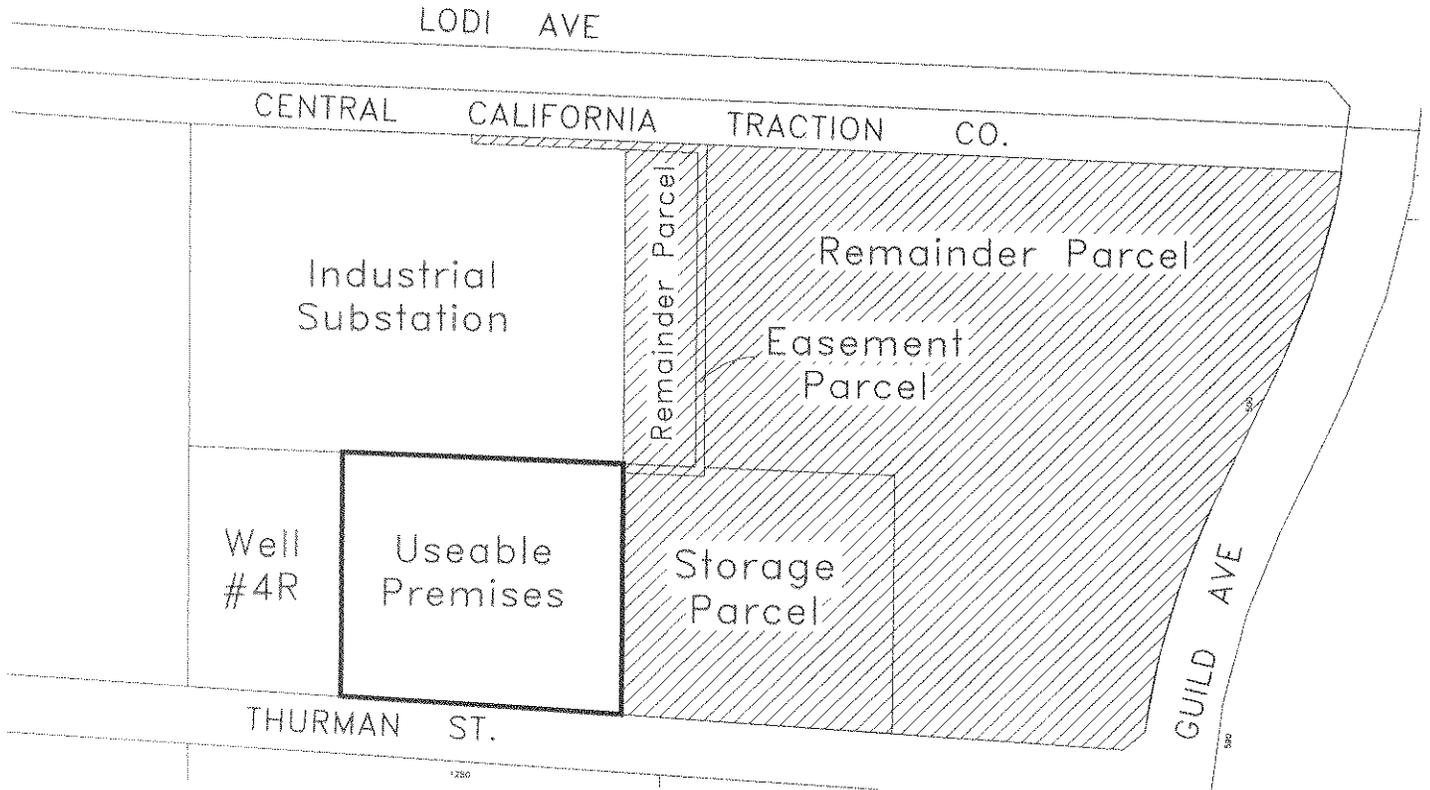
Thence South 02° 35' 21" West 266.05 feet to a point on the North Right of Way of Thurman Street;

Thence along said Right of Way line North 87° 24' 39" West 290.08 feet to the True Point of Beginning.

**EXHIBIT B**

**PLOT PLAN DEPICTING PREMISES**

**(including Useable Premises, Adjacent Premises, Easement Parcel,  
Storage Parcel and Remainder Parcel)**



 = Adjacent Premises

**EXHIBIT C**  
**PLOT PLAN DEPICTING EASEMENTS**  
**(ON ADJACENT PREMISES)**

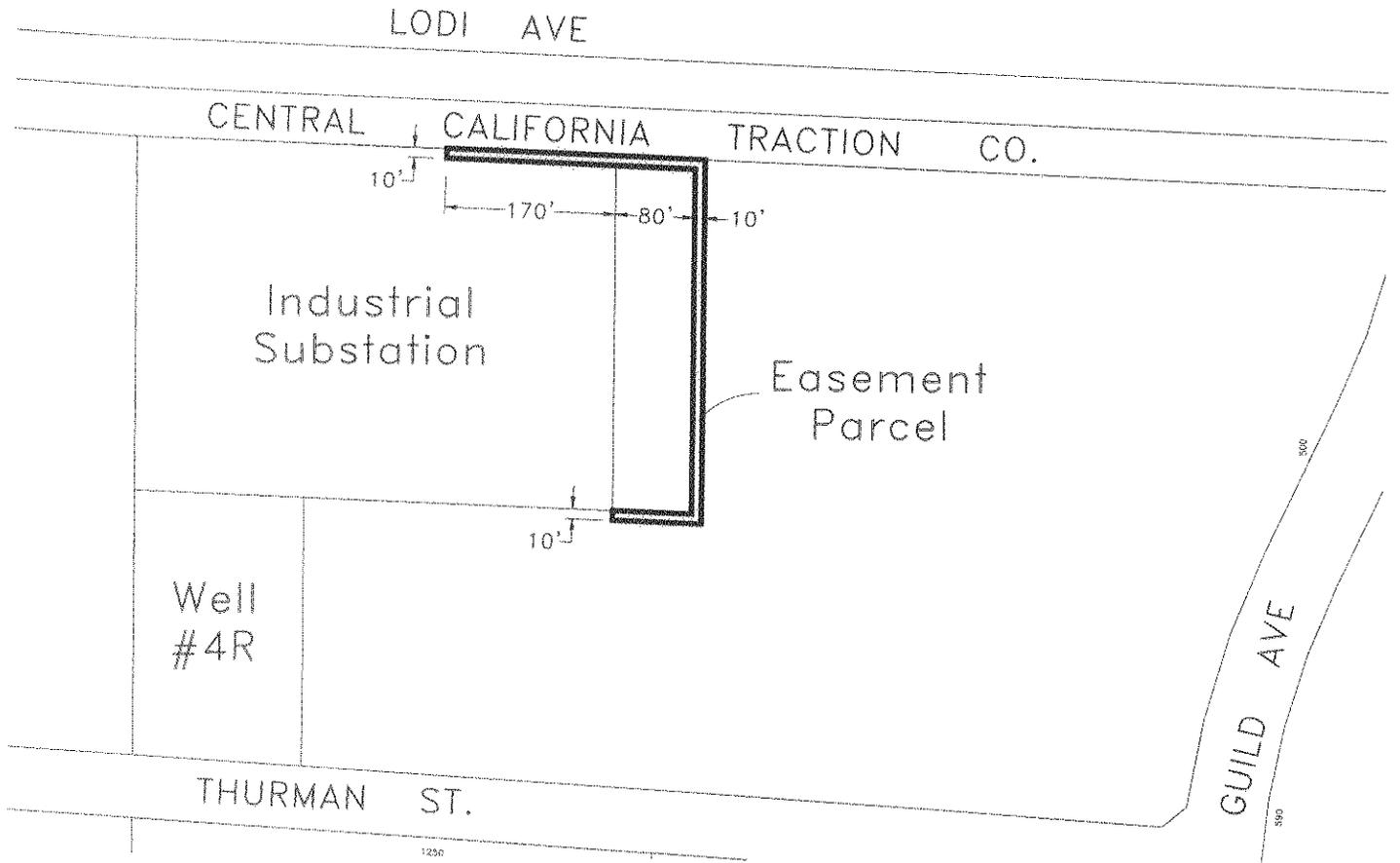
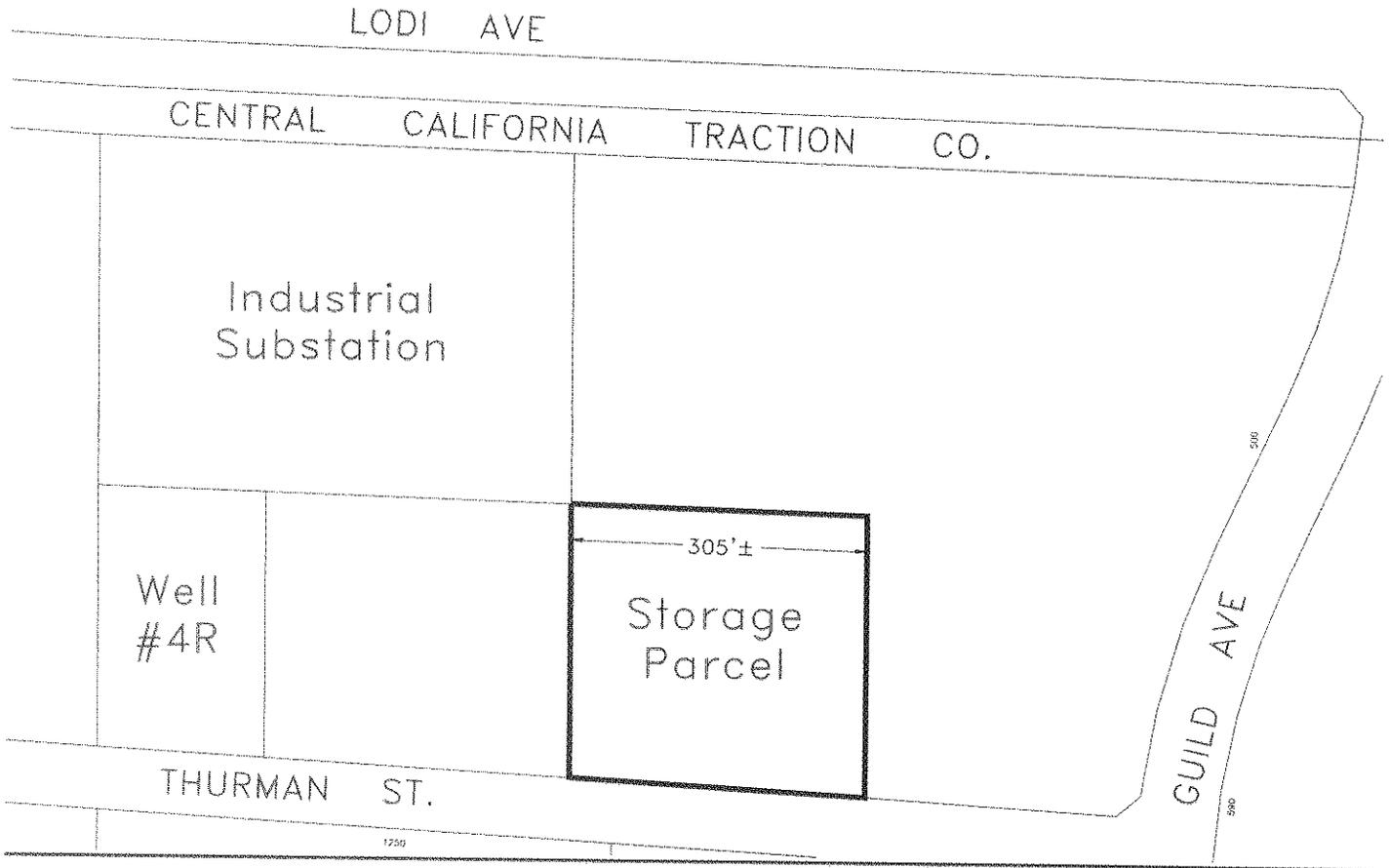


EXHIBIT D

PLOT PLAN DEPICTING LICENSED PARCEL



RESOLUTION NO. 2003-17

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING A  
MITIGATION MONITORING PROGRAM AND AUTHORIZING THE  
CITY MANAGER TO EXECUTE A LAND LEASE AGREEMENT WITH  
CALPEAK POWER, LLC FOR THE INSTALLATION OF A POWER  
GENERATION PLANT LOCATED AT THE FRED M. REID  
INDUSTRIAL SUBSTATION SITE, 1215 E. THURMAN STREET

---

NOW, THEREFORE, BE IT RESOLVED, that the Lodi City Council does hereby  
approve a Mitigation Monitoring Program for the CalPeak Power Project at 1215 E.  
Thurman Street, attached hereto as Exhibit A; and

BE IT FURTHER RESOLVED, that the Lodi City Council hereby authorizes the  
City Manager to execute a land lease agreement with CalPeak Power, LLC for the  
installation of a power generation plant located at the Fred M. Reid Industrial Substation  
Site, 1215 E. Thurman Street.

Dated: February 5, 2003

---

I hereby certify that Resolution No. 2003-17 was passed and adopted by the City  
Council of the City of Lodi in a regular meeting held February 5, 2003, by the following  
vote:

AYES: COUNCIL MEMBERS – Beckman, Hansen, Howard, Land, and  
Mayor Hitchcock

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON  
City Clerk

FINAL REPORT

**MITIGATION MONITORING  
AND REPORTING  
PROGRAM**

*Prepared by:*

**URS**

130 Robin Hill Road, Suite 100  
Santa Barbara, California 93117  
(805) 964-6010 ◆ Fax: (805) 964-0259

December 2002

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Appendix A Sample Reporting Form

The City of Lodi is the lead agency responsible for authorizing construction of the Lodi Electric Energy Facility (LEEF). The Initial Study (IS)/Mitigated Negative Declaration (MND) prepared for the project provides analysis of the environmental effects resulting from the construction and operation of the LEEF project (State Clearinghouse No. 2002102044, November 2002).

After considering the environmental analysis provided in the MND, the City of Lodi has issued a project site approval to construct the LEEF. CalPeak Power – Midway, LLC (CalPeak Power) proposes to construct and operate a nominal net 49 megawatt (MW) “simple-cycle” power plant referred to as LEEF. The plant will be constructed on property owned by the City of Lodi located at 1215 East Thurman Street, east of State Highway 99. The parcel (Assessor’s Parcel Number 049-070-75) is approximately 8.1 acres and the plant will occupy a two-acre portion of the parcel. The property is located in an industrially zoned portion of the City of Lodi, east of State Highway 99. A project location map and site plan are provided in Figures 1 and 2, respectively.

The project includes a number of measures to reduce or avoid potential environmental impacts associated with project construction and maintenance. Section 21081.6 of the Public Resources Code requires the lead or responsible agency, which approves or carries out a project where an MND has identified measures to mitigate significant environmental effects, to adopt a “reporting monitoring program for adopted or required changes to mitigate or avoid significant environmental effects.” In accordance with Section 21081.6 of the Public Resources Code, this Mitigation Monitoring and Reporting Program (MMRP) has been prepared.

### 1.1 PURPOSE OF THE MITIGATION MONITORING AND REPORTING PROGRAM

The MMRP developed for the LEEF project has been prepared in compliance with the requirements established in the California Environmental Quality Act (CEQA). CEQA provides that when adopting an MND, a public agency must adopt an MMRP for the changes to the project which it has adopted or made condition of approval in order to mitigate or avoid significant project-related impacts on the environment. The MMRP is designed to ensure compliance during implementation of the approved project through ongoing monitoring and reporting of adopted mitigation measures. The primary goal of the MMRP is to ensure that during final design, construction, and operation, the project will avoid or reduce potentially significant environmental impacts.

The achievement of this goal involves the following five key actions:

- Adoption of mitigation measures as identified in this MMRP and in the MND as conditions of approval of the project
- Implementation of the adopted mitigation measures, as appropriate during design, construction, and/or operation of the project
- Implementation of a monitoring process that confirms the application of the adopted mitigation measures
- Implementation of a monitoring process that measures the applied effectiveness of the adopted mitigation measures
- Establishment of a review and decision process that modifies the adopted mitigation measures or institutes new mitigation measures, as necessary, to achieve the avoidance or reduction of significant impacts recognized in the MND

The MMRP for the LEEF project will be in place through all phases of the project, including design, construction, and operation. The City of Lodi is responsible for the overall implementation and management of the MMRP through the design, construction, and operations periods. The City of Lodi includes staff familiar with the project and qualified to determine if an adopted mitigation measure is being properly implemented. The Community Development Director and/or assignee will be responsible for ensuring the following are implemented:

- A MMRP Reporting Form is prepared for each impact and its corresponding mitigation (see example in Appendix A).
- Appropriate specialists are retained as needed to perform or monitor specific mitigation activities.
- MMRP Reporting Forms are distributed to the appropriate parties so that specific action items can be developed to carry out the necessary mitigation. These will be listed in the implementation action items section of the form.
- Mitigation measures that continue into the operational phase will be incorporated into LEEF's operational procedures.
- The Community Development Director and/or assignee will approve, by signature and date, the completion of each action item that was identified on the MMRP Reporting Form.

All MMRP Reporting Forms for impacts requiring no further monitoring will be signed off as completed by the Community Development Director and/or assignee at the bottom of the MMRP Reporting Form.

Unanticipated circumstances may arise requiring the refinement of mitigation measures. The Community Development Director and/or assignee is responsible for approving any such refinements or additions. A revised MMRP Reporting Form will be prepared by the Community Development Director and/or assignee for each such addition or refinement and provided to the appropriate design, construction, or operational personnel for compliance.

The Community Development Director and/or assignee has the authority to stop the work of construction contractors, if compliance with any aspects of the MMRP is not occurring after appropriate notifications have been issued.

All active and completed MMRP Reporting Forms will be kept on file with the City of Lodi. Forms will be available for inspection upon request at the following address:

Mr. Konradt Bartlam  
Community Development Director  
City of Lodi  
221 West Pine Street  
Lodi, CA 95241-1910

## **2.1 MITIGATION MONITORING AND REPORTING PROGRAM PHASES**

The MMRP described herein is intended to provide focused yet flexible guidelines for monitoring the implementation of the mitigation measures discussed in the MND and approved by the City of Lodi. All mitigation measures that are the responsibility of the lead agency, are included and listed in Table 1. Other agencies involved in the implementation of a specific mitigation measure are shown in the "Associated Agency" column in Table 1. Section 3.0 of this document lists all mitigation measures adopted for the project. Each mitigation measure is individually numbered and grouped by area of potential impact. Table 1 correlates each mitigation measure by its assigned number to the specific phase of the project to which the measure applies. The three project phases, which include design, construction, and operation, are discussed in more detail below. A Reporting Form (see example in Appendix A) will be prepared for each impact and its corresponding mitigation measure as identified in Section 3.0 of this document.

### **2.1.1 Design Phase**

The design phase includes preparation of engineering design, architectural design, and construction drawings by project design engineers and architects. Prior to initiation of design phase activities, the measure(s) applicable to each design phase activity are identified and reviewed with the design engineer, architect, or other responsible parties. In the event the Community Development Director and/or assignee determines that there is non-compliance with any of the mitigation measures to be implemented during the design phase, corrective actions are required and a follow-up review is conducted after the design documents are modified in response to the Community Development Director and/or assignee comments. Reporting Forms are completed after each activity.

**TABLE 1  
APPLICABLE PROJECT PHASES FOR  
IMPLEMENTATION OF PROJECT MITIGATION**

Mitigation Measure	Applicable Phase			Agency	
	Design	Construction	Operation	Lead	Associated
<b>General</b>					
GEN-1	✓	✓		City of Lodi	County of San Joaquin
<b>Agriculture</b>					
AG-1				County of San Joaquin	
<b>Air Quality</b>					
AQ-1		✓		SJAPCD	City of Lodi
<b>Biological Resources</b>					
BIO-1	✓	✓	✓	CDFG/USFWS/NMFS	
BIO-2	✓	✓		CDFG/USFWS/NMFS	
BIO-3	✓			CDFG/USFWS/NMFS	
BIO-4		✓		City of Lodi	County of San Joaquin
BIO-5		✓		CDFG/USFWS/NMFS	
<b>Cultural Resources</b>					
CUL-1		✓		SHPO	N/A
<b>Geotechnical</b>					
GT-1	✓	✓		City of Lodi	County of San Joaquin
GT-2	✓	✓		City of Lodi	County of San Joaquin
<b>Hazards</b>					
HAZ-1	✓	✓	✓	City of Lodi	County of San Joaquin
HAZ-2	✓	✓	✓	City of Lodi	County of San Joaquin
<b>Noise</b>					
NOI-1	✓	✓		City of Lodi	N/A
<b>Public Utilities</b>					
PU-1	✓	✓		City of Lodi	N/A
<b>Traffic</b>					
TRA-1	✓	✓		City of Lodi	County of San Joaquin
TRA-2	✓	✓		City of Lodi	County of San Joaquin
<b>Visual Resources</b>					
VIS-1	✓	✓		City of Lodi	N/A
VIS-2	✓	✓	✓	City of Lodi	N/A
VIS-3	✓		✓	City of Lodi	N/A

SJAPCD: San Joaquin Air Pollution Control District

CDFG: California Department of Fish and Game

USFWS: U.S. Fish and Wildlife Service

NMFS: National Marine Fisheries Service

N/A: Not Applicable

### 2.1.2 Construction Phase

A pre-construction meeting will be held with the contractor prior to the initiation of construction activity. The Community Development Director and/or assignee will attend the meeting to explain the MMRP contractor and City of Lodi roles and responsibilities; and the approach for consultation site visits and inspections. Construction activities are monitored as conditions dictate to ensure that required mitigation measures are implemented. Applicable measures are discussed with construction contractors periodically as needed to facilitate implementation. The Community Development Director and/or assignee coordinates with affected local, state, and federal agencies to ensure applicable ordinance, standards, and guidelines for construction are implemented.

### 2.1.3 Operational Phase

Once the facility is complete and operating, the operational aspects of the MMRP will, at this point, become part of LEEF's operational procedures.

The mitigation measures described in the MND that were adopted as conditions of project approval are listed below. Mitigation is listed by type of topical issue.

### **3.1 GENERAL**

**GEN-1** Prior to site development, CalPeak Power will submit project construction and grading plans to the city of Lodi Public Works Department for review and comment. The plan submittal will follow a typical building permit and grading permit submittal process. CalPeak Power will incorporate the plan check comments into the project.

### **3.2 AGRICULTURE**

**AG-1** The San Joaquin Multi-Space County Plan (SJMSCP) designates these two parcels *Multi-Purpose Open Space Lands* and this category does not require compensation in the form of preserve acquisition. The Multi-Purpose Open Space Lands have a limited value to the SJMSCP covered species and their conversion necessitates a requirement to assist in financing the SJMSCP Preserve System by supporting a portion of the enhancement, management, and administrative costs associated with the preserve system. The LEEF project will submit the \$895 per acre fee or the rate in effect at the time of permit issuance consistent with the provisions of the adopted SJMSCP.

### **3.3 AIR QUALITY**

**AQ-1** CalPeak Power will comply with the SJAPCD rules and regulations to reduce fugitive dust emissions, including implementing the following:

- All unpaved construction areas will be sprinkled with water or other acceptable SJAPCD dust-control agents during dust-generating activities to reduce dust emissions. Additional watering or acceptable SJAPCD dust-control agents will be applied during dry weather or windy days.

### **3.4 BIOLOGICAL RESOURCES**

**BIO-1** The Mokelumne River crossing will be designed and constructed in such a way as to avoid impacts to the waterway and adjacent riparian areas, with the use of directional drilling techniques. The boring entry and exit areas will be placed no closer than 250 feet from the top of the bank with all staging and construction areas located in previously disturbed, paved, or ruderal areas. A frac-out contingency plan will be implemented to minimize potential impacts from the release of drilling muds into the water column.

## SECTION 3.0

## INVENTORY OF MITIGATION MEASURES

- BIO-2** All impacts to native trees, shrubs, and habitats will be avoided by design. A biological monitor will be onsite during construction to ensure that native trees, shrubs, or habitats are not impacted.
- BIO-3** Any active or potential raptor nests will be monitored by biological monitors with no construction activities occurring within one-quarter mile (1,320 feet) of the nests until any young have fledged. If a raptor or other special-status bird is found nesting in a tree, construction activities may be delayed, or other protective measures pursued, dependent upon the direction of the qualified biologist.
- BIO-4** Upon completion of construction, all areas subject to temporary ground disturbances, including the laydown area, pipeline corridors, and pulling areas, will be restored to pre-construction conditions.
- BIO-5** All mitigation measures specified as conditions of any permits necessary for the project (i.e., U.S. Army Corps of Engineers Section 404 permit, etc.) will be implemented.

### 3.5 CULTURAL RESOURCES

- CUL-1** If buried cultural materials are encountered during construction, all work in that area must halt until a qualified archaeologist can evaluate the nature and significance of the finds and recommend further mitigation measures if needed. If human remains are encountered during construction, all work in that area must halt immediately and the San Joaquin County Coroner must be contacted, pursuant to California Public Resources Code sections 5097.94, 5097.98 and 5097.99. Once the County Coroner has made a determination as to the remains, the Applicant will coordinate with the State Historic Preservation Office (SHPO) and other parties, as appropriate, to develop a plan to evaluate the resource and make a determination regarding additional mitigation measures that may be required.

### 3.6 GEOTECHNICAL

- GT-1** Grading and construction standards based on the site-specific conditions identified in the Applicant's Geotechnical Report will be incorporated into design and construction of the proposed facilities, including the following:
- Project design will meet or exceed existing earthquake design standards.
  - Grading and site preparation will adhere to the requirements provided in the geotechnical engineering study to be prepared for the pipeline and the plant site.

GT-2 The project will implement construction BMPs, and will employ the protective erosion control measures consistent with those described in the State General Permit for Discharges Associated with Construction Activities and the project Stormwater Pollution Prevention Plan (SWPPP).

### 3.7 HAZARDS

HAZ-1 The plant and gas pipeline will be designed, constructed, and operated in conformance with all applicable laws, ordinances, regulations, and standards, including all applicable industry safety standards, City of Lodi and County of San Joaquin ordinances/standards. The U.S. Department of Transportation's Office of Pipeline Safety standards will be adhered to during the construction and operation of the gas pipeline and associated facilities.

HAZ-2 Safety precautions have been designed and will be installed in order to mitigate risks associated with a potential accident, including secondary containment around hazardous materials associated with the facility, preparation and implementation of a SPCC Plan, a hazardous materials Business Plan, and a RMP pursuant to the CalARP Program. LNG facilities, if used, will be outfitted with appropriate fire prevention and response features in accordance with NFPA 59A, and be included in the CalARP Program Risk Management Program.

### 3.8 NOISE

NOI-1 All construction activities will comply with the County of San Joaquin and the City of Lodi's allowable construction limits of 7 a.m. to 7 p.m. Monday through Saturday, and prohibits construction on Sundays and holidays.

### 3.9 PUBLIC UTILITIES

PU-1 CalPeak Power will coordinate the proposed project design, specifically proposed trenching activities, with responsible utilities to ensure that the project does not conflict with existing utilities and maintenance of those utilities, particularly related to City Water Well #4.

### 3.10 TRAFFIC

TRA-1 A traffic control plan will be prepared by KD Anderson in accordance with the County of San Joaquin and City of Lodi traffic control guidelines, and will address construction traffic along the pipeline route. Trenching of the natural gas pipeline

along the north side of Clarksdale Road will require signage, flagmen, and lane restrictions. The traffic control plan will also include provisions for coordinating with local emergency service providers regarding construction times and lane closures.

**TRA-2** CalPeak Power will obtain an encroachment permit from the County of San Joaquin for proposed trenching activities affecting County roads, and through the city of Lodi for trenching activities. This process will include submittal of project plans, review of plans by the County, possible revisions of the plans relative to concerns brought forth by the County of San Joaquin, and finally, issuance of the respective permit.

### 3.11 VISUAL RESOURCES

**VIS-1** The project design includes perimeter fencing along Thurman Street at the plant site. The facility will be color-treated with consistent, non-reflective paint tones. It has been designed in accordance with the City of Lodi Design Review Guidelines and approved by the City of Lodi.

**VIS-2** The site will be landscaped at initial development of the facility and will be done in accordance with the landscape concept plan designed in accordance with the City of Lodi. The metering station will be landscaped in accordance with San Joaquin County requirements.

**VIS-3** During normal operation, night lighting will consist of shoebox fixtures. Outside floodlights will be installed approximately every foot, pursuant to City of Lodi requirements. The lamp housing will be adjusted to shine out and down. Other facility lighting will be used during emergencies only. Operations lighting will be shielded to minimize offsite glare.

URS Corporation. 2002. Preliminary Frac-Out Contingency Plan.

SAMPLE REPORTING FORM

LODI ELECTRIC ENERGY FACILITY  
MITIGATION MONITORING AND REPORTING PROGRAM

REPORTING FORM

---

---

MMRP FILE:

Location:  Onsite

Offsite (Give Address)

---

---

Project Phase:  Design

Construction

Operation

Impact Issue(s):

- |                                     |   |                                       |   |
|-------------------------------------|---|---------------------------------------|---|
| <input type="checkbox"/> Land Use   | <input type="checkbox"/> Biological Resources | <input type="checkbox"/> Air Quality  | <input type="checkbox"/> Hazardous Waste    |
| <input type="checkbox"/> Aesthetics | <input type="checkbox"/> Public Utilities     | <input type="checkbox"/> Noise        | <input type="checkbox"/> Cultural Resources |
| <input type="checkbox"/> Hydrology  | <input type="checkbox"/> Transportation       | <input type="checkbox"/> Geotechnical |   |

Description of Activity:

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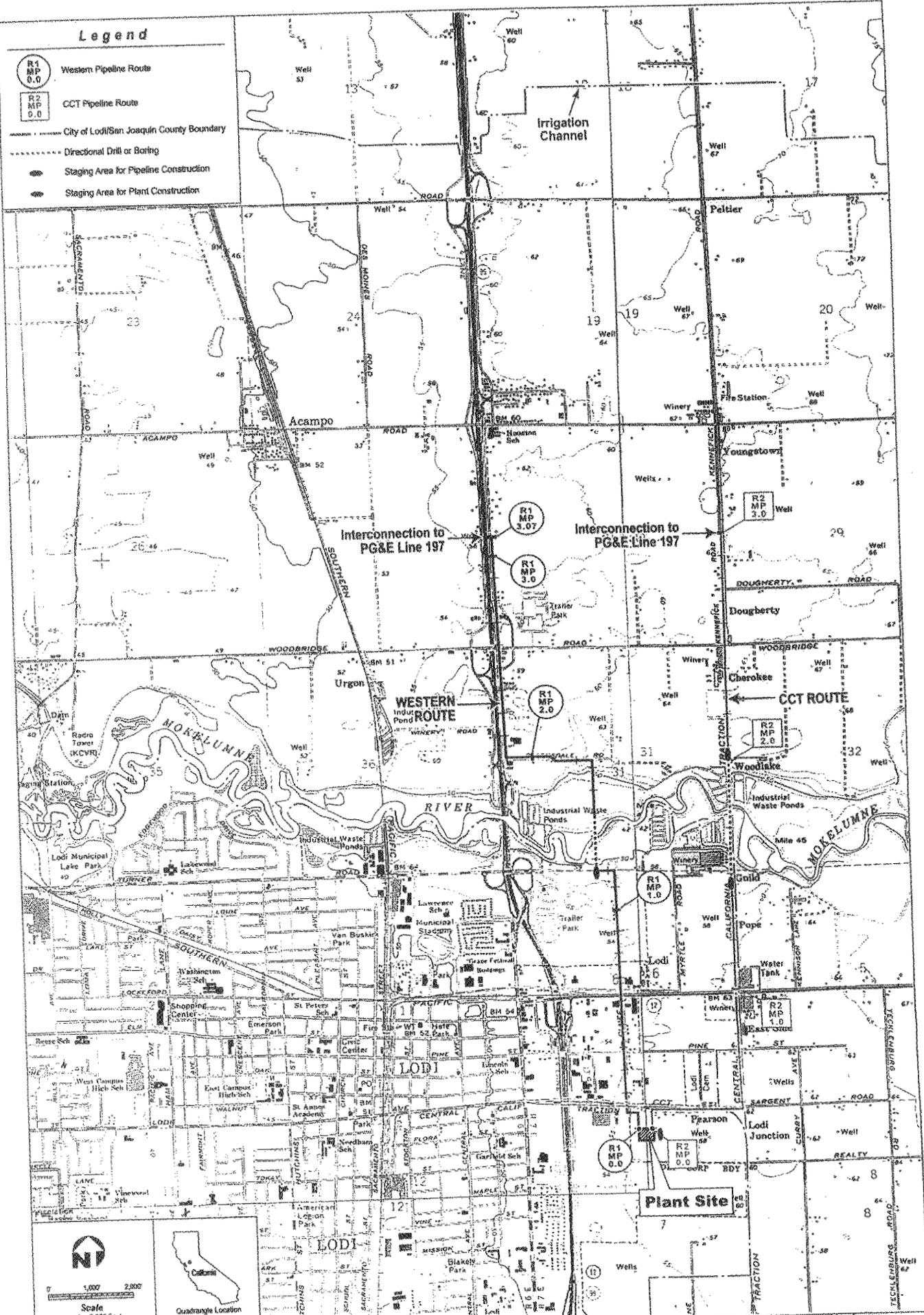
Applicable Mitigation Measures:

---

Methods of Implementation:



TL\ddg\Calf\p\l\l\002-2110



**Legend**

- R1  
MP  
0.0 Western Pipeline Route
- R2  
MP  
0.0 CCT Pipeline Route
- City of Lodi/San Joaquin County Boundary
- Directional Drill or Boring
- Staging Area for Pipeline Construction
- Staging Area for Plant Construction

**Scale**  
1 inch = 2,000 Feet

**Quadrangle Location**

**URS**

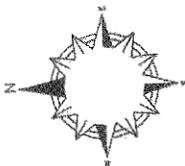
**Lodi Electric Energy Facility**

Source: 7.5' topographic quadrangles:  
Lodi North, CA 1968 (Photorevised 1976);  
Lockeford, CA 1966 (Photorevised 1979) (Minor  
Revision 1993; Waterloo, CA 1966 (Photorevised

**Figure 1. PROJECT LOCATION MAP**

December 2002

INDUSTRIAL SUBSTATION

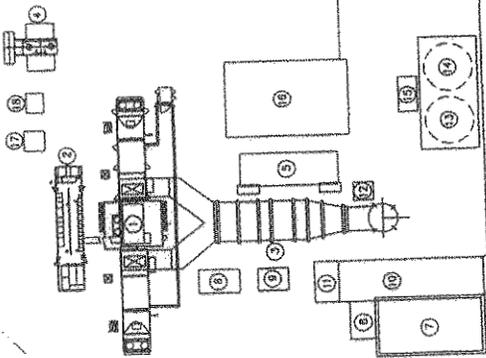


100' EASEMENT (SUBSTATION ACCESS)

LODI ELECTRIC UTILITY EMPLOYEE PARKING LOT

10" DIAMETER NATURAL GAS PIPELINE

ITEM	DESCRIPTION	QTY
1	SHIFTPACED GAS TURBINE GENERATOR UNIT	1
2	PRIMARY CONTROL ENCLOSURE	1
3	CO/SCR CATALYST	1
4	MAIN STEP-UP TRANSFORMER (13.8 x 60 KV)	1
5	SECONDARY CONTROL ENCLOSURE	1
6	AIR COMPRESSOR SKID	1
7	AQUEOUS AMMONIA TANK & CONTAINMENT AREA	1
8	AQUEOUS AMMONIA FORWARDING PUMP SKID	1
9	AQUEOUS AMMONIA INJECTION CONTROL SKID	1
10	AQUEOUS AMMONIA UNLOADING AREA	1
11	WASH DOWN DRAIN TANK AREA	1
12	CEMS ENCLOSURE	1
13	DEMINERALIZED WATER TANK	1
14	DEMINERALIZED WATER TANK	1
15	WATER PUMP SKID	1
16	NATURAL GAS COMPRESSOR SKID	1
17	AUXILIARY TRANSFORMER (13,800 x 480 V)	1
18	AUXILIARY TRANSFORMER (13,800 x 4160 V)	1
19	PIG RECEIVER	1



GATE

THURMAN STREET

EXISTING UNDERGROUND ELECTRICAL UTILITIES



Source:  
Energy Services, Inc.  
LODL-100 Rev. A  
Dated 12/02/02

Lodi Electric Energy Facility



December 2002

Figure 2. SITE PLAN